

# **HUMAN RESOURCES CODE**

## **CHAPTER 842**

**H. B. No. 1834**

**An Act adopting the Human Resources Code, a nonsubstantive revision of the statutes relating to state programs, assistance, and services for needy persons, children, and handicapped persons.**

***Be it enacted by the Legislature of the State of Texas:***

## **ARTICLE 1**

**Section 1. Adoption of Code.** The Human Resources Code is adopted to read as follows:

## **HUMAN RESOURCES CODE**

### **TITLE 1. GENERAL PROVISIONS**

#### **Chapter**

- 1. General Provisions.**

### **TITLE 2. DEPARTMENT OF HUMAN RESOURCES**

#### **SUBTITLE A. GENERAL PROVISIONS**

- 11. General Provisions.**
- 12. Penal Provisions.**

#### **SUBTITLE B. STRUCTURE AND FUNCTIONS OF DEPARTMENT**

- 21. Administrative Provisions.**
- 22. General Functions of Department.**

#### **SUBTITLE C. ASSISTANCE PROGRAMS**

- 31. Financial Assistance and Services Program.**
- 32. Medical Assistance Program.**
- 33. Nutritional Assistance Programs.**

#### **SUBTITLE D. CHILD WELFARE AND PROTECTIVE SERVICES**

- 41. Child Welfare Services.**
- 42. Regulation of Child-Care Facilities.**
- 43. Regulation of Child-Care Administrators.**
- 44. Administration of Federally Established Day-Care Programs.**
- 45. Interstate Placement of Children.**
- 46. Child Support Collection, Parent Locator, and Paternity Determination Services.**
- 47. Adoption Services for Hard-to-Place Children.**

**TITLE 3. FACILITIES AND SERVICES FOR CHILDREN**

**SUBTITLE A. FACILITIES FOR CHILDREN**

**Chapter**

- 61. Texas Youth Council.**
- 62. Detention Homes and Parental Schools.**

**SUBTITLE B. SERVICES FOR CHILDREN**

- 71. Commission on Services to Children and Youth.**

**TITLE 4. SERVICES FOR THE DEAF**

- 81. State Commission for the Deaf.**

**TITLE 5. SERVICES FOR THE BLIND AND  
VISUALLY HANDICAPPED**

- 91. State Commission for the Blind.**
- 92. Governor's Coordinating Office for the Visually Handicapped.**
- 93. Committee on Purchases of Blind-Made Products and Services.**
- 94. Vending Facilities Operated by Blind Persons.**

**TITLE 6. SERVICES FOR THE ELDERLY**

- 101. Governor's Committee on Aging.**

**TITLE 7. REHABILITATION OF HANDICAPPED  
AND DISABLED**

- 111. Texas Rehabilitation Commission.**

**TITLE 8. RIGHTS AND RESPONSIBILITIES OF  
THE HANDICAPPED**

- 121. Participation in Social and Economic Activities.**

**HUMAN RESOURCES CODE**

**TITLE 1. GENERAL PROVISIONS**

**CHAPTER 1. GENERAL PROVISIONS**

**Section**

- 1.001. Purpose of Code.**
- 1.002. Construction of Code.**

**Sec. 1.001. Purpose of Code**

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b—1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent human resources law more accessible and understandable by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible. (New)

**Sec. 1.002. Construction of Code**

The Code Construction Act (Article 5429b—2, Vernon's Texas Civil Statutes) applies to the construction of each provision of this code, except as otherwise expressly provided by this code. (New)

## **TITLE 2. DEPARTMENT OF HUMAN RESOURCES**

### **SUBTITLE A. GENERAL PROVISIONS**

#### **CHAPTER 11. GENERAL PROVISIONS**

**Section**

- 11.001. Definitions.  
11.002. Purpose of Title; Construction.  
11.003. Responsibility of Counties and Municipalities Not Affected.  
11.004. Powers and Functions Not Affected.

**Sec. 11.001. Definitions**

In this title:

- (1) "Board" means the Texas Board of Human Resources.
- (2) "Department" means the Texas Department of Human Resources.
- (3) "Commissioner" means the Commissioner of Human Resources.
- (4) "Assistance" means all forms of assistance and services for needy persons authorized by Subtitle C of this title.
- (5) "Financial assistance" means money payments for needy persons authorized by Chapter 31 of this code.
- (6) "Medical assistance" means assistance for needy persons authorized by Chapter 32 of this code. (V.A.C.S. Art. 695c, Secs. 1 (part) and 2-A; new.)

**Sec. 11.002. Purpose of Title; Construction**

(a) The purpose of this title is to establish a program of social security to provide necessary and prompt assistance to the citizens of this state who are entitled to avail themselves of its provisions.

(b) This title shall be liberally construed in order that its purposes may be accomplished as equitably, economically, and expeditiously as possible. (V.A.C.S. Art. 695c, Sec. 35.)

**Sec. 11.003. Responsibility of Counties and Municipalities Not Affected**

No provision of this title is intended to release the counties and municipalities in this state from the specific responsibilities they have with regard to the support of public welfare, child welfare, and relief services.

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**§ 11.003**

Funds which the counties and municipalities may appropriate for the support of those programs may be administered through the department's local or regional offices, and if administered in that manner must be devoted exclusively to the programs in the county or municipality making the appropriation. (V.A.C.S. Art. 695c, Sec. 39.)

**Sec. 11.004. Powers and Functions Not Affected**

The provisions of this title are not intended to interfere with the powers and functions of the Texas Rehabilitation Commission, the State Commission for the Blind, the division of maternal and child health of the Texas Department of Health, or county juvenile boards. (V.A.C.S. Art. 695c, Sec. 9.)

**CHAPTER 12. PENAL PROVISIONS**

**Section**

**12.001. Prohibited Activities.**

**12.002. Unlawful Use of Funds.**

**12.003. Disclosure of Information Prohibited.**

**Sec. 12.001. Prohibited Activities**

(a) A person who is not licensed to practice law in Texas commits an offense if the person charges a fee for representing or aiding an applicant or recipient in procuring assistance from the department.

(b) A person commits an offense if the person advertises, holds himself or herself out for, or solicits the procurement of assistance from the department.

(c) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 695c, Secs. 32(2) and 34 (part).)

**Sec. 12.002. Unlawful Use of Funds**

(a) A person charged with the duty or responsibility of administering, disbursing, auditing, or otherwise handling the grants, funds, or money provided for in this title commits an offense if the person misappropriates the grants, funds, or money or by deception or fraud wrongfully distributes the grants, funds, or money to any person.

(b) An offense under this section is a felony punishable by confinement in the state penitentiary for a term of not less than two or more than seven years. (V.A.C.S. Art. 695c, Sec. 30.)

**Sec. 12.003. Disclosure of Information Prohibited**

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 695c, Secs. 33(1) and 34 (part); Art. 695j—1, Secs. 10 (part) and 12 (part).)

SUBTITLE B. STRUCTURE AND FUNCTIONS  
OF DEPARTMENT

## CHAPTER 21. ADMINISTRATIVE PROVISIONS

## Section

- 21.001. Department of Human Resources.
- 21.002. Application of Sunset Act.
- 21.003. Board of Human Resources.
- 21.004. Commissioner.
- 21.005. Divisions of Department; Personnel.
- 21.006. Local Administration.
- 21.007. Merit System.
- 21.008. Staff Development.
- 21.009. Political Activities Prohibited for Officers and Employees.
- 21.010. Budget.
- 21.011. Reports.
- 21.012. Confidentiality of Information.
- 21.013. Oaths and Acknowledgments.

**Sec. 21.001. Department of Human Resources**

The Texas Department of Human Resources is composed of the Texas Board of Human Resources, the Commissioner of Human Resources, and other officers and employees required to efficiently carry out the purposes of this title. (V.A.C.S. Art. 695c, Sec. 2(1) (part).)

**Sec. 21.002. Application of Sunset Act**

The Texas Department of Human Resources is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the department is abolished and this title expires effective September 1, 1985. (V.A.C.S. Art. 695c, Sec. 2(4).)

**Sec. 21.003. Board of Human Resources**

(a) The Texas Board of Human Resources is responsible for the adoption of policies and rules for the government of the department.

(b) The board is composed of three members appointed by the governor with the advice and consent of the senate and representing all geographic regions of the state. To qualify for an appointment to the board, a person must have demonstrated an interest in and knowledge of public welfare and must have had experience as an executive or administrator.

(c) Members of the board serve for staggered terms of six years with the term of one member expiring on January 20 of each odd-numbered year.

(d) After the biennial appointment of a new member, the board shall elect a presiding officer who shall preside over meetings of the board.

(e) Two members of the board constitute a quorum for the transaction of business.

(f) The board's office is in Austin in a building designated by the State Board of Control.

(g) While performing their duties board members are entitled to \$25 per day for not more than 60 days during each fiscal year. They are also entitled to reimbursement for actual expenses incurred in the performance of their duties. (V.A.C.S. Art. 695c, Secs. 2(1) (part), (2), and (3); Sec. 3(2).)

**Sec. 21.004. Commissioner**

(a) The Commissioner of Human Resources is the executive and administrative officer of the department. The commissioner exercises all rights, powers, and duties imposed or conferred by law on the department unless the right, power, or duty is specifically delegated by the board to the department's agents or employees.

(b) The commissioner is appointed by the board with the advice and consent of two-thirds of the membership of the senate and serves at the pleasure of the board.

(c) To be eligible for appointment as commissioner, a person must be at least 35 years old, have been a resident citizen of Texas for at least 10 years prior to the appointment, have had experience as an executive or administrator, and not have served as an elected state officer during the six-month period preceding the appointment. (V.A.C.S. Art. 695c, Sec. 2(1)a; Secs. 3(1) and (3).)

**Sec. 21.005. Divisions of Department; Personnel**

(a) The commissioner may establish divisions within the department that he considers necessary for effective administration and the discharge of the department's functions.

(b) The commissioner may allocate and reallocate functions among the divisions.

(c) The commissioner may employ personnel necessary for the administration of the department's duties. (V.A.C.S. Art. 695c, Sec. 5.)

**Sec. 21.006. Local Administration**

(a) The department shall establish a system of local administration and employ personnel necessary to carry out the purposes of this title in an economical manner.

(b) The commissioner may provide for the appointment of local boards to advise the local administrative units. The commissioner shall determine the size of the boards and the qualifications of the members. The functions of the boards may not conflict with or duplicate the functions of other boards authorized by law to advise the department. (V.A.C.S. Art. 695c, Sec. 4 (part).)

**Sec. 21.007. Merit System**

The department may establish a merit system for its employees. The merit system may be maintained in conjunction with other state agencies that are required by federal law to operate under a merit system. (V.A.C.S. Art. 695c, Sec. 4 (part).)

**Sec. 21.008. Staff Development**

(a) The department may establish staff development plans to assist employees in obtaining the technical and professional education required to administer the department's assistance programs more effectively and efficiently and to provide improved services to the needy. The plans must include a provision for granting paid educational leave to selected employees.

(b) The department's plans must conform to the requirements of the Department of Health, Education, and Welfare.

(c) The department may make payments for the paid educational leave or other staff development plans in the form of grants or stipends or by other methods.

(d) The cost of the staff development plans may be made out of state and federal funds within the limits of appropriated funds. (V.A.C.S. Art. 695j—1, Sec. 14.)

**Sec. 21.009. Political Activities Prohibited for Officers and Employees**

(a) An officer or employee of the department may not use his official authority or influence or permit the use of the programs administered by the department for the purpose of interfering with or affecting the results of an election or for any political purpose.

(b) An officer or employee of the department may not take an active part in political management or in a political campaign or participate in any political activity. However, an officer or employee retains the right to vote as he or she pleases and may express his or her opinion as a citizen on all political subjects.

(c) An officer or employee of the department may not solicit or receive, or be obliged to contribute or render, any service, assistance, subscriptions, assessments, or contributions for any political purpose.

(d) An officer or employee of the department who violates a provision of this section is subject to discharge or suspension or other disciplinary measures authorized by the department's rules. (V.A.C.S. Art. 695c, Sec. 31.)

**Sec. 21.010. Budget**

(a) The commissioner shall prepare and submit to the board for approval a biennial budget and request for an appropriation by the legislature of funds necessary to carry out the duties of the department. The budget and request must include an estimate of all federal funds to be allotted to the state for the department's purposes.

(b) The board shall submit the budget and request to the Legislative Budget Board and the governor in the manner prescribed by law. (V.A.C.S. Art. 695c, Sec. 10.)

**Sec. 21.011. Reports**

On or before October 1 of each year the commissioner shall prepare and submit to the board a full report on the operation and administration of the department together with his recommendations for changes. The board shall submit the report to the governor and the legislature. (V.A.C.S. Art. 695c, Sec. 11.)

**Sec. 21.012. Confidentiality of Information**

(a) The department shall establish and enforce reasonable rules governing the custody, use, and preservation of the department's records, papers, files, and communications. The department shall provide safeguards which restrict the use or disclosure of information concerning applicants for or recipients of the department's assistance programs to purposes directly connected with the administration of the programs.

(b) If under a provision of law lists of the names and addresses of recipients of the department's assistance programs are furnished to or held by a governmental agency other than the department, that agency shall adopt rules necessary to prevent the publication of the lists or the use of the lists for purposes not directly connected with the administration of the assistance programs. (V.A.C.S. Art. 695c, Sec. 33(2); Art. 695j—1, Sec. 10 (part).)

**Sec. 21.013. Oaths and Acknowledgments**

A local representative of the department who is responsible for investigating and determining the eligibility of an applicant for assistance authorized in this title may administer oaths and take acknowledgments concerning all matters relating to the administration of this title. The representative shall sign the oaths or acknowledgments and indicate his or her position and title but need not seal the instruments. The agent

has the same authority as a notary public coextensive with the limits of the state for the purpose of administering the provisions of this title. (V.A.C.S. Art. 695c, Sec. 37.)

## **CHAPTER 22. GENERAL FUNCTIONS OF DEPARTMENT**

### **Sections**

- 22.001. General Powers and Duties of the Department.**
- 22.002. Administration of Federal Welfare Programs.**
- 22.003. Research and Demonstration Projects.**
- 22.004. Provision of Legal Services.**
- 22.005. Funds.**

### **Sec. 22.001. General Powers and Duties of the Department**

(a) The department is responsible for administering the welfare functions authorized in this title.

(b) The department shall administer assistance to needy persons who are aged, blind, or disabled and to needy families with dependent children. The department shall also administer or supervise general relief and child welfare services.

(c) The department shall assist other governmental agencies in performing services in conformity with the purposes of this title when so requested and shall cooperate with the agencies when expedient.

(d) The department shall conduct research and compile statistics on public welfare programs in the state. The research must include all phases of dependency and delinquency and related problems. The department shall cooperate with other public and private agencies in developing plans for the prevention and treatment of conditions giving rise to public welfare problems. (V.A.C.S. Art. 695c, Sec. 4 (part).)

### **Sec. 22.002. Administration of Federal Welfare Programs**

(a) The department is the state agency designated to cooperate with the federal government in the administration of Titles IV, XIX, and XX of the federal Social Security Act. The department shall administer other titles added to the act after January 1, 1979, unless another state agency is designated by law to perform the additional functions. The department shall cooperate with federal, state, and local governmental agencies in the enforcement and administration of the federal act, and shall promulgate rules to effect that cooperation.

(b) The department shall cooperate with the United States Department of Health, Education, and Welfare and other federal agencies in a reasonable manner and in conformity with the provisions of this title to the extent necessary to qualify for federal assistance for persons entitled to benefits under the federal Social Security Act. The department shall make reports periodically in compliance with federal regulations.

(c) The department may establish and maintain programs of assistance and services authorized by federal law and designed to help needy families and individuals attain and retain the capability of independence and self-care. Notwithstanding any other provision of law, the department may extend the scope of its programs to the extent necessary to ensure that federal matching funds are available, if the department determines that the extension of scope is feasible and within the limits of appropriated funds.

(d) If the department determines that a provision of state welfare law conflicts with a provision of federal law, the department may promulgate policies and rules necessary to allow the state to receive and



expend federal matching funds to the fullest extent possible in accordance with the federal statutes and the provisions of this title and the state constitution and within the limits of appropriated funds.

(e) The department may accept, expend, and transfer federal and state funds appropriated for programs authorized by federal law. The department may accept, expend, and transfer funds received from a county, municipality, or public or private agency or from any other source, and the funds shall be deposited in the state treasury subject to withdrawal on order of the commissioner in accordance with the department's rules.

(f) The department may enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized in Subsection (c) of this section. The agreements or contracts between the department and other state agencies are not subject to the Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes). (V.A.C.S. Art. 695c, Secs. 6 and 4 (part).)

#### **Sec. 22.003. Research and Demonstration Projects**

(a) The department may conduct research and demonstration projects that in the judgment of the commissioner will assist in promoting the purposes of the department's assistance programs. The department may conduct the projects independently or in cooperation with a public or private agency.

(b) The department may use state or federal funds available for its assistance programs or for research and demonstration projects to support the projects. The projects must be consistent with the state and federal laws making the funds available. (V.A.C.S. Art. 695j—1, Sec. 15.)

#### **Sec. 22.004. Provision of Legal Services**

(a) On request, the department may provide legal services to an applicant for or recipient of assistance at a hearing before the department.

(b) The services must be provided by an attorney licensed to practice law in Texas or by a law student acting under the supervision of a law teacher or a legal services organization, and the attorney or law student must be approved by the department.

(c) The department shall adopt a reasonable fee schedule for the legal services. The fees may not exceed those customarily charged by an attorney for similar services for a private client. The fees may be paid only from funds appropriated to the department for the purpose of providing these legal services. (V.A.C.S. Art. 695c, Sec. 32(1).)

#### **Sec. 22.005. Funds**

(a) The children's assistance fund and the medical assistance fund are separate accounts in the Texas Department of Human Resources fund. Money in the separate accounts may be expended only for the purposes for which the accounts were created or as otherwise provided by law.

(b) The comptroller shall maintain a department of human resources administration operating fund and a department of human resources assistance operating fund as funds in the state treasury. The commodity distribution fund may not be included in these operating funds.

(c) On authorization by the department, the comptroller may transfer funds appropriated for the operation of the department, current revenues, and balances on hand into the department of human resources administration operating fund or the department of human resources assistance operating fund. On authorization by the department, the comptroller shall transfer designated funds between the two operating funds.

(d) With the approval of the state auditor, the department shall establish an internal accounting system, and the department's expenditures shall be allocated to the various funds according to the system. At the end of each fiscal biennium the department shall report to the comptroller the amount of the unencumbered balances in each of the department's operating funds that belongs to the children's assistance fund and the medical assistance fund, and those unencumbered balances shall be returned to the appropriate special fund.

(e) If the department determines that a transfer among appropriated state funds is needed to match federal medical assistance funds, the department may authorize the comptroller in writing to transfer funds allocated to the children's assistance fund into the medical assistance fund, and the department may use the transferred funds to provide medical assistance to the greatest extent possible within the limits of state and federal law.

(f) The state treasurer is the designated custodian of all funds administered by the department and received by the state from the federal government or any other source for the purpose of implementing the provisions of the Social Security Act. The treasurer may receive the funds, pay them into the proper fund or account of the general fund of the state treasury, provide for the proper custody of the funds, and make disbursements of the funds on the order of the department and on warrant of the comptroller. (V.A.C.S. Art. 695c, Sec. 27.)

## SUBTITLE C. ASSISTANCE PROGRAMS

### CHAPTER 31. FINANCIAL ASSISTANCE AND SERVICE PROGRAMS

#### SUBCHAPTER A. ELIGIBILITY FOR FINANCIAL ASSISTANCE AND SERVICES

##### Section

- 31.001. Aid to Families With Dependent Children.
- 31.002. Definition of Dependent Child.
- 31.003. Amount of Financial Assistance.
- 31.004. Foster Care.
- 31.005. Dependent Child Residing With Relatives.
- 31.006. Welfare and Related Services.
- 31.007. Financial Assistance to Individuals in Institutions.
- 31.008. Counseling and Guidance Services.
- 31.009. Required Registration With Texas Employment Commission.
- 31.010. Services.

[Sections 31.011–31.030 reserved for expansion]

#### SUBCHAPTER B. ADMINISTRATION OF FINANCIAL ASSISTANCE AND SERVICES

- 31.031. Application for Assistance.
- 31.032. Investigation and Determination of Eligibility.
- 31.033. Reinvestigation and Redetermination of Eligibility.
- 31.034. Appeal from Local Administrative Units.
- 31.035. Method of Payment.
- 31.036. Eligibility of Person Leaving the State.
- 31.037. Payment of Financial Assistance Funds on Death of Recipient.
- 31.038. Cancellation of Uncashed Warrants.

**SUBCHAPTER B. ADMINISTRATION OF FINANCIAL ASSIST-  
ANCE AND SERVICES—Continued****Section**

- 31.039. Issuance of Duplicate Assistance Warrants.  
31.040. Nontransferability of Assistance Funds.  
31.041. Right to Assistance Not Vested.  
31.042. Proration of Financial Assistance.

**SUBCHAPTER A. ELIGIBILITY FOR FINANCIAL ASSISTANCE AND  
SERVICES****Sec. 31.001. Aid to Families With Dependent Children**

The department shall provide financial assistance and services to families with dependent children in accordance with the provisions of this chapter. (V.A.C.S. Art. 695c, Sec. 17 (part).)

**Sec. 31.002. Definition of Dependent Child**

(a) In this chapter, the term "dependent child" applies to a child:

- (1) who is a resident of this state;
- (2) who is under 18 years of age or is under 21 years of age and is regularly attending a school, college, university, or vocational or technical training program in accordance with standards set by the department;
- (3) who has been deprived of parental support or care because of the death, continued absence from home, or physical or mental incapacity of a parent;
- (4) who has insufficient income or other resources to provide a reasonable subsistence compatible with health and decency; and
- (5) who is living in the home residence of his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(b) In this chapter, the term "dependent child" also applies to a child:

- (1) who meets the specifications set forth in Subdivisions (1)-(4) of the preceding subsection;
- (2) who has been removed from the home of a relative specified in Subdivision (5) of the preceding subsection as a result of a judicial determination that the child's residence there is contrary to his or her welfare;
- (3) whose placement and care are the responsibility of the department or an agency with which the department has entered into an agreement for the care and supervision of the child;
- (4) who has been placed in a foster home or child-care institution by the department; and
- (5) for whom the state may receive federal funds for the purpose of providing foster care in accordance with rules promulgated by the department. (V.A.C.S. Art. 695c, Secs. 17 (part) and 17-A (part).)

**Sec. 31.003. Amount of Financial Assistance**

(a) The department shall adopt rules governing the determination of the amount of financial assistance to be granted for the support of a dependent child. The amount granted, when combined with the income and other resources available for the child's support, must be sufficient to provide the child with a subsistence compatible with decency and health.

(b) In considering the amount of income or other resources available to a child or a relative claiming financial assistance on the child's behalf, the department shall also consider reasonable expenses attributable to

earning the income. The department may permit all or part of the earned or other income to be set aside for the future identifiable needs of the child, subject to limitations prescribed by the department.

(c) The department's agents employed in the region or county in which the dependent child resides shall determine the amount to be paid in accordance with the rules promulgated by the department. (V.A.C.S. Art. 695c, Secs. 17 (part) and 18.)

**Sec. 31.004. Foster Care**

The department may accept and spend funds available from any source to provide foster care in facilities approved by the licensing division of the department for dependent children who meet the specifications set out in Section 31.002(b) of this code. (V.A.C.S. Art. 695c, Sec. 17-A (part).)

**Sec. 31.005. Dependent Child Residing With Relatives**

(a) If after an investigation the department determines that a family with a dependent child is needy and that the child resides with the family, the department shall provide financial assistance and services for the support of the family.

(b) The department shall formulate policies for studying and improving the child's home conditions and shall plan services for the protection of the child and for the child's health and educational needs.

(c) A dependent child who is between 18 and 21 years of age and whose family is receiving financial assistance or services on his or her behalf must enroll in school during the regular school term unless the department finds that good cause exists for the nonattendance of the child at school. Failure to comply with this requirement constitutes good cause for the termination of the financial assistance or services.

(d) The department shall develop a plan for the coordination of the services provided for dependent children under this chapter and other child welfare services for which the department is responsible. (V.A.C.S. Art. 695c, Sec. 19.)

**Sec. 31.006. Welfare and Related Services**

(a) The department shall develop and implement a program of welfare and related services for each dependent child which, in light of the particular home conditions and other needs of the child, will best promote the welfare of the child and his or her family and will help to maintain and strengthen family life by assisting the child's parents or relatives to attain and retain their capabilities for maximum self-support and personal independence consistent with the maintenance of continued parental care and protection.

(b) The department shall coordinate the services provided under the program with other services provided by the department and by other public and private welfare agencies for the care and protection of children.

(c) The department may promulgate rules which will enable it to fully participate in work and training programs authorized by federal law, to provide for all services required or deemed advisable under the provisions of the program, and to accept, transfer, and expend funds made available from public or private sources for the purpose of carrying out the provisions of this section. (V.A.C.S. Art. 695c, Sec. 18-A.)

**Sec. 31.007. Financial Assistance to Individuals in Institutions**

A person who is in an institution is eligible to receive financial assistance under this chapter if the person would be eligible to receive the financial assistance if he were not in an institution and if the payments are made in accordance with the department's rules promulgated in conformity with federal law and rules. (V.A.C.S. Art. 695c, Sec. 38(2).)

**Sec. 31.008. Counseling and Guidance Services**

(a) If the department believes that financial assistance to a family with a dependent child is not being, or may not be, used in the best interest of the child, the department may provide counseling and guidance services to the relative receiving financial assistance with respect to the use of the funds and the management of other funds in the child's best interest.

(b) The department may advise the relative that continued failure to use the funds in the child's best interest will result in the funds being paid to a substitute payee. If the department determines that protective payments are required to safeguard the best interest of the child, the department may pay the funds to a substitute payee on a temporary basis in accordance with the department's rules.

(c) If the situation in the home which made the protective payments necessary does not improve, and if the department determines that the relative with whom the child is living is unable or does not have the capacity to use the funds for the best interest of the child, then the department may make arrangements with the family for other plans for the care of the child. The other plans may include:

- (1) removing the child to the home of another relative;
- (2) appointment of a guardian or legal representative for the relative with whom the child is living;
- (3) imposition of criminal or civil penalties if a court determines that the relative is not using, or has not used, the payments for the benefit of the child; or
- (4) referral of the case to a court for the removal of the child and the placement of the child in a foster home.

(d) The department may make payments on behalf of a dependent child residing in a foster family home or a child-care institution in accordance with the provisions of this chapter and the rules of the department. (V.A.C.S. Art. 695c, Sec. 19-A.)

**Sec. 31.009. Required Registration With Texas Employment Commission**

(a) A person who is required to register with the Texas Employment Commission under the Employment Incentive Act is not eligible to receive financial assistance under this chapter until the person is registered.

(b) Before making a payment, the department shall determine whether the person to whom the payment is to be made is required to register with the Texas Employment Commission under the Employment Incentive Act, and if the person is required to register, whether the person is registered. If the department finds that a person who is required to register is not registered, the department may not make the payment.

(c) On receipt of notice from the Texas Employment Commission that a person has failed to comply with the Employment Incentive Act, the department shall immediately terminate the person's financial assistance.

(d) The department shall maintain a current record of all persons found to be ineligible to receive financial assistance for failure to comply with the Employment Incentive Act. The department shall distribute the record to each division within the department in which the record is or may be relevant in determining eligibility for any welfare benefits.

(e) The department shall arrange placement of the dependent children of an ineligible person with another person or with an institution if the department determines that alternative care is in the best interest of the children. (V.A.C.S. Art. 695c, Sec. 19-B.)

**Sec. 31.010. Services**

The department may provide services designed to assist needy families and individuals attain and retain the capability of independence and self-care if federal matching funds are available for the support of the services. (New)

[Sections 31.011–31.030 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATION OF FINANCIAL ASSISTANCE  
AND SERVICES**

**Sec. 31.031. Application for Assistance**

(a) The department by rule shall prescribe the form for applications for assistance authorized by this chapter and the manner of their submission.

(b) The department may require the applicant to state the amount of property in which he or she has an interest, the amount of income which he or she has at the time the application is filed, and other information. (V.A.C.S. Art. 695c, Sec. 22.)

**Sec. 31.032. Investigation and Determination of Eligibility**

(a) On receipt of an application for assistance authorized by this chapter, the department shall investigate and record the applicant's circumstances in order to ascertain the facts supporting the application and to obtain other information it may require.

(b) After completing its investigation, the department shall determine whether the applicant is eligible for the assistance, the type and amount of assistance, the date on which the assistance shall begin, and the manner in which payments shall be made.

(c) The department shall promptly notify the applicant of its final action. (V.A.C.S. Art. 695c, Sec. 23.)

**Sec. 31.033. Reinvestigation and Redetermination of Eligibility**

(a) The department may require periodic reconsideration of continued eligibility for assistance.

(b) After reconsideration of continuing eligibility, the department may change the amount of assistance or withdraw it if the department finds that the recipient's circumstances have altered sufficiently to warrant that action.

(c) The department may cancel or suspend assistance for a period of time if the department finds that the recipient is currently ineligible to receive it.

(d) The department shall notify the recipient immediately of its decision to change or withdraw assistance.

(e) A recipient of assistance must notify the department immediately if he or she comes into possession of income or resources in excess of the amount previously reported. (V.A.C.S. Art. 695c, Sec. 24.)

**Sec. 31.034. Appeal from Local Administrative Units**

(a) An applicant for or recipient of financial assistance authorized by this chapter may appeal to the department an action or failure to act by a local administrative unit relating to the financial assistance. The department shall grant the applicant or recipient an opportunity for a hearing after reasonable notice.

(b) An applicant or recipient, or his or her authorized agent, may submit a written request for the information contained in the unit's records on which the action being appealed is based, and the unit shall advise the person making the request of the information within a reasonable time prior to the hearing. Information not provided to the request-

ing party may not be considered by the department at the hearing as a basis for decision. (V.A.C.S. Art. 695c, Sec. 25.)

**Sec. 31.035. Method of Payment**

(a) The department shall periodically furnish the comptroller with a list of persons eligible for financial assistance under this chapter and the amount to which each person is entitled.

(b) The comptroller shall draw warrants for the specified amounts on the proper accounts of the Texas Department of Human Resources fund and shall transmit the warrants to the commissioner. The commissioner shall supervise the delivery of the warrants to the persons entitled to them. (V.A.C.S. Art. 695c, Sec. 26.)

**Sec. 31.036. Eligibility of Person Leaving the State**

A recipient of assistance who moves out of the state is no longer eligible for the assistance. However, a recipient's temporary absence from the state for reasons and for periods of time approved by the department does not terminate the recipient's eligibility for assistance. (V.A.C.S. Art. 695c, Sec. 41.)

**Sec. 31.037. Payment of Financial Assistance Funds on Death of Recipient**

(a) If a person dies during a month for which the person is eligible for financial assistance and has not endorsed or cashed the warrant issued for financial assistance during that month, the department may pay financial assistance to the person who was responsible for caring for the recipient at the time of his or her death and who is responsible for paying the obligations incurred by the recipient.

(b) The department shall adopt rules prescribing the method of determining the person entitled to receive the deceased recipient's financial assistance, the manner of payment of the funds, and limitations on the payments.

(c) Payments to persons responsible for deceased recipients under this section may be made only in the manner and to the extent permissible under the laws and regulations governing the disbursement of funds received through the Department of Health, Education, and Welfare. (V.A.C.S. Art. 695c, Sec. 29 (part).)

**Sec. 31.038. Cancellation of Uncashed Warrants**

On authorization by the department, the comptroller may cancel financial assistance warrants that have not been cashed within a reasonable period of time after issuance. (V.A.C.S. Art. 695c, Sec. 29 (part).)

**Sec. 31.039. Issuance of Duplicate Assistance Warrants**

(a) Except as provided by Subsection (b) of this section, the comptroller may issue a duplicate financial assistance warrant to a recipient who has failed to receive or has lost the original warrant in accordance with Article 4365, Revised Civil Statutes of Texas, 1925, as amended.

(b) The comptroller may not issue a duplicate financial assistance warrant after one year from the date the original warrant was issued. (V.A.C.S. Art. 695c, Sec. 29-A.)

**Sec. 31.040. Nontransferability of Assistance Funds**

The right to financial assistance granted to recipients under this chapter may not be transferred or assigned at law or in equity, and the funds are not subject to execution, levy, attachment, garnishment, or other legal process or to the operation of an insolvency law. (V.A.C.S. Art. 695c, Sec. 29 (part).)

**Sec. 31.041. Right to Assistance Not Vested**

(a) The provisions of this chapter providing assistance shall not be construed as vesting a right in the recipient to the assistance.

(b) Assistance granted under this chapter is subject to modification or repeal by the legislature, and a recipient has no claim for compensation or otherwise because the law authorizing the assistance is amended or repealed. (V.A.C.S. Art. 695c, Secs. 29 (part) and 36.)

**Sec. 31.042. Proration of Financial Assistance**

If at any time state funds are not available to pay in full all financial assistance authorized in this chapter, the department may direct the proration of financial assistance. (V.A.C.S. Art. 695c, Sec. 28.)

**CHAPTER 32. MEDICAL ASSISTANCE PROGRAM**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Section**

- 32.001. Purpose of Chapter.
- 32.002. Construction of Chapter.
- 32.003. Definition of Medical Assistance.

[Sections 32.004–32.020 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

- 32.021. Administration of the Program.
- 32.022. Medical Care Advisory Committee.
- 32.023. Cooperation With Other State Agencies.
- 32.024. Authority and Scope of Program; Eligibility.
- 32.025. Application for Medical Assistance.
- 32.026. Certification of Eligibility and Need for Medical Assistance.
- 32.027. Selection of Provider of Medical Assistance.
- 32.028. Fees, Charges, and Rates.
- 32.029. Methods of Payment.
- 32.030. Medical Assistance Fund.
- 32.031. Receipt and Expenditure of Funds.
- 32.032. Prevention and Detection of Fraud.
- 32.033. Subrogation.
- 32.034. Contract Cancellation; Notice and Hearing.
- 32.035. Appeals.
- 32.036. Program Payments Nonassignable and Exempt from Legal Process.
- 32.037. Geriatric Center.

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 32.001. Purpose of Chapter**

The purpose of this chapter is to enable the state to provide medical assistance on behalf of needy individuals and to enable the state to obtain all benefits for those persons authorized under the Social Security Act or any other federal act. (V.A.C.S. Art. 695j, Sec. 2 (part); Art. 695j—1, Sec. 2 (part).)

**Sec. 32.002. Construction of Chapter**

(a) This chapter shall be liberally construed and applied in relation to applicable federal laws and regulations so that adequate and high quality health care may be made available to all children and adults who need the care and are not financially able to pay for it.

(b) If a provision of this chapter conflicts with a provision of the Social Security Act or any other federal act and renders the state program out of conformity with federal law to the extent that federal matching money is not available to the state, the conflicting provision of state law



shall be inoperative to the extent of the conflict but shall not affect the remainder of this chapter. (V.A.C.S. Art. 695j—1, Secs. 2 (part), 20.)

**Sec. 32.003. Definition of Medical Assistance**

In this chapter, "medical assistance" includes all of the health care and related services and benefits authorized or provided under federal law for needy individuals of this state. (V.A.C.S. Art. 695j—1, Sec. 2 (part).)

[Sections 32.004–32.020 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**Sec. 32.021. Administration of the Program**

(a) The department is the state agency designated to administer the medical assistance program provided in this chapter.

(b) The department shall enter into agreements with any federal agency designated by federal law to administer medical assistance when the department determines the agreements to be compatible with the state's participation in the medical assistance program and within the limits of appropriated funds. The department shall cooperate with federal agencies designated by federal law to administer medical assistance in any reasonable manner necessary to qualify for federal funds.

(c) The department shall establish methods of administration and adopt necessary rules for the proper and efficient operation of the program. (V.A.C.S. Art. 695j, Secs. 2 (part) and 5 (part); Art. 695j—1, Sec. 3 (part).)

**Sec. 32.022. Medical Care Advisory Committee**

(a) The commissioner shall appoint a medical care advisory committee to advise the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing high quality, comprehensive medical and health care services to needy persons in the state.

(b) The commissioner shall appoint the committee of the size, membership, and experience the commissioner determines essential for the implementation of the program and in compliance with the federal agency administering medical assistance.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, continuity, and representation of the various professions and disciplines authorized to provide medical assistance.

(d) Members of the committee receive no compensation for their services but are entitled to reimbursement for actual expenses incurred in performing committee duties.

(e) The commissioner may appoint regional and local medical care advisory committees and other advisory committees he considers necessary. (V.A.C.S. Art. 695j—1, Secs. 3 (part) and 16.)

**Sec. 32.023. Cooperation With Other State Agencies**

(a) The department's plan for administering medical assistance must include procedures for using health services administered by other state agencies pursuant to cooperative arrangements.

(b) The department may enter into agreements with appropriate state agencies that will enable the department to implement Title XIX of the federal Social Security Act to provide medical assistance for individuals in institutions or in alternate care arrangements. The agreements must comply with federal law and rules. The department may make medical assistance payments in accordance with the agreements. The agreements

are not subject to the Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes).

(c) State agencies responsible for the administration or supervision of facilities to which medical assistance payments may be made under federal law shall enter into the agreements with the department and maintain compliance with the agreements so that the department may receive federal matching funds to support the medical assistance program.

(d) The department may pay medical assistance to other facilities as required under federal law and rules. (V.A.C.S. Art. 695c, Sec. 38(3); Art. 695j—1, Secs. 3 (part) and 19.)

**Sec. 32.024. Authority and Scope of Program; Eligibility**

(a) The department shall provide medical assistance to all persons who receive financial assistance from the state under Chapter 31 of this code and to other related groups of persons if the provision of medical assistance to those persons is required by federal law and rules as a condition for obtaining federal matching funds for the support of the medical assistance program.

(b) The department may provide medical assistance to other persons who are financially unable to meet the cost of medical services if federal matching funds are available for that purpose. The department shall adopt rules governing the eligibility of those persons for the services.

(c) The department shall establish standards governing the amount, duration, and scope of services provided under the medical assistance program. The standards may not be lower than the minimum standards required by federal law and rule as a condition for obtaining federal matching funds for support of the program, and may not be lower than the standards in effect on August 27, 1967. Standards or payments for the vendor drug program may not be lower than those in effect on January 1, 1973.

(d) The department may establish standards that increase the amount, duration, and scope of the services provided only if federal matching funds are available for the optional services and payments and if the department determines that the increase is feasible and within the limits of appropriated funds. The department may establish and maintain priorities for the provision of the optional medical services.

(e) The department may not authorize the provision of any service to any person under the program unless federal matching funds are available to pay the cost of the service. (V.A.C.S. Art. 695j—1, Secs. 3 (part), 4, and 5 (part).)

**Sec. 32.025. Application for Medical Assistance**

(a) A recipient of benefits under Chapter 31 of this code or supplemental security income from the federal government is automatically eligible for medical assistance, and an application for benefits under these programs constitutes an application for medical assistance.

(b) The department shall prescribe application forms for persons who are not recipients of benefits under Chapter 31 of this code or supplemental security income from the federal government and shall adopt rules for processing the applications. (V.A.C.S. Art. 695j—1, Sec. 8.)

**Sec. 32.026. Certification of Eligibility and Need for Medical Assistance**

(a) The department shall promulgate rules for determining and certifying a person's eligibility and need for medical assistance.

(b) Medical assistance payments may not be made on a person's behalf until the person's eligibility and need for medical assistance have

been certified in accordance with the department's rules. (V.A.C.S. Art. 695j, Sec. 4.)

**Sec. 32.027. Selection of Provider of Medical Assistance**

(a) A recipient of medical assistance authorized in this chapter may select any provider authorized by the department to provide medical assistance.

(b) The department shall assure that a recipient of medical assistance under this chapter may select a licensed podiatrist to perform any foot health care service or procedure covered under the medical assistance program if the podiatrist is authorized by law to perform the service or procedure. This subsection shall be liberally construed. (V.A.C.S. Art. 695j—1, Secs. 5 (part) and 5A.)

**Sec. 32.028. Fees, Charges, and Rates**

(a) The department shall adopt reasonable rules and standards governing the determination of fees, charges, and rates for medical assistance payments.

(b) The fee, charge, or rate for a professional service is the usual and customary fee, charge, or rate that prevails in the community.

(c) The fee, charge, or rate for other medical assistance is the usual and customary fee, charge, or rate that prevails in the community unless the payment is limited by state or federal law. (V.A.C.S. Art. 695j—1, Sec. 6 (part).)

**Sec. 32.029. Methods of Payment**

(a) The department may prescribe a method of payment for medical assistance claims by establishing a direct vendor payment program that is administered by the department, or by an insurance plan, a hospital or medical service plan, or any other health service plan authorized to do business in the state, or by a combination of those plans.

(b) The department may use any fiscal intermediary, method of payment, or combination of methods it finds most satisfactory and economical. The department may make whatever changes it finds necessary from time to time to administer the program in an economical and equitable manner consistent with simplicity of administration and the best interest of the recipients of medical assistance.

(c) If the department elects to make direct vendor payments, the payments shall be made by vouchers and warrants drawn by the comptroller on the proper account of the Texas Department of Human Resources fund. The department shall furnish the comptroller with a list of those vendors entitled to payments and the amounts to which each is entitled. When the warrants are drawn, they must be delivered to the commissioner, who shall supervise the delivery to vendors.

(d) If at any time state funds are not available to fully pay all claims for medical assistance, the board shall prorate the claims. (V.A.C.S. Art. 695j, Secs. 5 (part) and 6; Art. 695j—1, Sec. 6 (part).)

**Sec. 32.030. Medical Assistance Fund**

(a) The medical assistance fund is a special fund in the treasury and constitutes a separate account in the Texas Department of Human Resources fund. The fund may be expended only for the purpose of carrying out the provisions of this chapter.

(b) When necessary the department may request the transfer of money appropriated for financial assistance to the medical assistance fund. The transfer shall be requested and made in the manner authorized in the General Appropriations Act and in accordance with the department's rules. (V.A.C.S. Art. 695j, Sec. 8 (part); Art. 695j—1, Sec. 17 (part).)

**Sec. 32.031. Receipt and Expenditure of Funds**

(a) The department may accept federal funds for the support of the medical assistance program and may expend the funds in the manner prescribed by this chapter or other laws. The expenditures must be made in accordance with appropriate agreements between the state and the federal government.

(b) The department may administer and expend state funds appropriated for the program in accordance with its rules and the provisions of this chapter.

(c) The amount of state funds spent for medical assistance on behalf of a qualified individual may not exceed the amount that is matchable with federal funds, and the total amount of state funds spent for all medical assistance on behalf of all qualified individuals may not exceed the amount that is matchable with federal funds. (V.A.C.S. Art. 695j, Secs. 2 (part), 5 (part), 8 (part), and 10; Art. 695j—1, Secs. 3 (part), 6 (part), 13, and 17 (part).)

**Sec. 32.032. Prevention and Detection of Fraud**

The department shall adopt reasonable rules for minimizing the opportunity for fraud, for establishing and maintaining methods for detecting and identifying situations in which a question of fraud in the program may exist, and for referring cases where fraud appears to exist to the appropriate law enforcement agencies for prosecution. (V.A.C.S. Art. 695j—1, Secs. 3 (part) and 12 (part).)

**Sec. 32.033. Subrogation**

(a) The department or any person, firm, or institution that furnishes medical care services to a recipient of medical assistance under this chapter is subrogated to the person's right of recovery from

(1) personal insurance;

(2) other sources; or

(3) another person for personal injury caused by the other person's negligence or wrong.

(b) The department's right of subrogation is limited to the amount of the cost of medical care services paid by the department. Other subrogation rights granted under this section are limited to the cost of the services provided.

(c) The commissioner may waive the department's right of subrogation in whole or in part when the commissioner finds that enforcement would tend to defeat the purpose of public assistance.

(d) A claim for damages for personal injury does not constitute grounds for denying or discontinuing assistance under this chapter.

(e) The department may adopt rules for the enforcement of its right of subrogation. (V.A.C.S. Art. 695j—1, Secs. 3 (part) and 11.)

**Sec. 32.034. Contract Cancellation; Notice and Hearing**

(a) When the department intends to cancel its contract with a person providing medical assistance, the department shall give reasonable notice and an opportunity for a hearing if one is requested. The department shall adopt rules consistent with the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes) to implement this section, and hearings under this section are contested cases under that act.

(b) The department may not terminate a contract during the pendency of a hearing under this section. The department may withhold payments during the pendency of a hearing, but the department shall pay the withheld payments and resume contract payments if the final determination is favorable to the contractor.

(c) The section does not apply if a contract is cancelled because federal matching funds for contract payments are no longer available or if the contract expires according to its terms. (V.A.C.S. Art. 695j—1, Sec. 9-A.)

**Sec. 32.035. Appeals**

The provisions of Section 31.034 of this code governing the right of appeal of an applicant for or recipient of financial assistance authorized under Chapter 31 of this code also apply to applicants for medical assistance authorized in this chapter. (V.A.C.S. Art. 695j—1, Sec. 9.)

**Sec. 32.036. Program Payments Nonassignable and Exempt from Legal Process**

(a) Neither medical assistance nor payments to providers of medical assistance under this chapter are transferable or assignable at law or in equity.

(b) No money paid or payable under the provisions of this chapter is subject to execution, levy, attachment, garnishment, or any other legal process, or the operation of any insolvency law. (V.A.C.S. Art. 695j—1, Sec. 7.)

**Sec. 32.037. Geriatric Center**

(a) The department may accept one geriatric center in the city of Austin from the federal government to be operated as a nursing home and a training facility and used in administering the department's programs.

(b) The department may charge reasonable fees for providing nursing home care. However, fees charged persons receiving medical assistance under this chapter may not exceed the amounts paid on their behalf under this chapter.

(c) Fees collected by the department under this section shall be deposited in a special fund in the state treasury or in accounts in financial institutions and may be used by the department to operate the nursing home.

(d) The department may use funds appropriated for nursing home care under its medical services programs for the maintenance and improvement of the property acquired under this section and for the operation of the nursing home. (V.A.C.S. Art. 695j—1, Sec. 15A.)

## CHAPTER 33. NUTRITIONAL ASSISTANCE PROGRAMS

**Section**

- 33.001. Distribution of Surplus Commodities.
- 33.002. Distribution of Commodities and Food Stamps.
- 33.003. Distribution Districts; Agents.
- 33.004. Advisory Boards.
- 33.005. Processing Perishable Commodities.
- 33.006. Handling Charges.
- 33.007. Commodity Distribution Fund.
- 33.008. Sale of Used Commodity Containers.
- 33.009. Revolving Funds.
- 33.010. Sale of Equipment and Property.
- 33.011. Prohibited Activities; Penalties.

**Sec. 33.001. Distribution of Surplus Commodities**

(a) The department is the state agency designated to cooperate with the federal government in administering the distribution of federal surplus commodities and other resources.

(b) The department may cooperate with a city or county in any manner necessary for the proper operation of this program. (V.A.C.S. Art. 695c, Sec. 7 (part).)

**Sec. 33.002. Distribution of Commodities and Food Stamps**

(a) The department is responsible for the distribution of commodities and food stamps allocated to the department by the federal government.

(b) The department may enter into agreements with federal agencies that are required as a prerequisite to the allocation of the commodities or food stamps. The department may enter into agreements with eleemosynary institutions, schools, and other eligible agencies and recipients of the commodities and food stamps.

(c) The department shall establish policies and rules that will ensure the widest and most efficient distribution of the commodities and food stamps to those eligible to receive them. (V.A.C.S. Art. 695c, Sec. 7-A (part).)

**Sec. 33.003. Distribution Districts; Agents**

(a) The department may establish distribution districts and employ distributing agents or may make other arrangements necessary to provide for the efficient distribution of commodities and food stamps.

(b) A distributing agent must be bonded. The department shall audit a distributing agent's records at least once annually and at any other time considered expedient by the department. (V.A.C.S. Art. 695c, Sec. 7-A (part).)

**Sec. 33.004. Advisory Boards**

(a) The department may establish state or district-level advisory boards to facilitate the operations of the commodity distribution or food stamp programs.

(b) The advisory boards shall be of the size, membership, and experience that the commissioner determines to be essential for the accomplishment of the purposes of this chapter and not in conflict with or duplicative of other laws on this subject. (V.A.C.S. Art. 695c, Sec. 7-A (part).)

**Sec. 33.005. Processing Perishable Commodities**

(a) The department may enter into nonprofit contracts with state institutions or state or private agencies for the processing of perishable commodities to preserve them for subsequent distribution to eligible recipients.

(b) The cost of processing shall be borne by each recipient on a pro rata basis in relation to the amount of the processed commodities received by each distribution district. (V.A.C.S. Art. 695c, Sec. 7-A (part).)

**Sec. 33.006. Handling Charges**

(a) The department may assess reasonable handling charges against the recipients of commodities or food stamps to cover the cost of distribution. The total operation must be conducted on a nonprofit basis.

(b) The department shall make the assessments at the times and in the amounts that it considers necessary for the proper administration of the programs. However, the assessments must be uniform in each distribution district and may not exceed 60 cents per recipient per year. (V.A.C.S. Art. 695c, Sec. 7-A (part).)

**Sec. 33.007. Commodity Distribution Fund**

(a) Funds received from assessments for handling charges pursuant to Section 33.006 of this code shall be paid to the department and deposited in a separate account in the state treasury subject to withdrawal on authorization of the commissioner.

(b) The funds may be used only for necessary expenses incurred in operating the commodity distribution and food stamp programs, and their use is subject to the rules of the department, the provisions of this chapter, and the provisions of the general appropriation acts of the legislature.

(c) If the commodity distribution program or food stamp program is terminated, funds remaining in the account after all due and just accounts have been paid shall be refunded to the contributors on a pro rata basis. (V.A.C.S. Art. 695c, Sec. 7-A (part).)

**Sec. 33.008. Sale of Used Commodity Containers**

The department may sell used commodity containers. Proceeds from the sales in each distribution district shall be deposited in the commodity distribution fund and used for the commodity distribution program. (V.A.C.S. Art. 695c, Sec. 7-A (part).)

**Sec. 33.009. Revolving Funds**

(a) The department may establish a revolving fund or petty cash expense fund in each distribution district to provide for emergency payments for services, goods, or other necessary activities. The commissioner shall determine the amount of each fund on the basis of the anticipated needs of each district and in accordance with the department's rules.

(b) The revolving funds shall be established and reimbursed with funds received as assessments for handling charges.

(c) The revolving fund at the disposal of each distributing agent shall be deposited in a bank designated by the commissioner in an account known as the commodity distribution fund. The money shall be expended on the authority of the distributing agent under the direction of the department.

(d) The distributing agent shall make a monthly report to the department of the funds received and disbursed.

(e) If the commodity distribution program and food stamp program are terminated the money remaining in the commodity distribution fund in each district shall be refunded to the contributors on a pro rata basis after all due and just accounts are paid. (V.A.C.S. Art. 695c, Sec. 7-A (part).)

**Sec. 33.010. Sale of Equipment and Property**

If the commodity distribution and/or food stamp programs are terminated, equipment and property purchased with funds from the commodity distribution fund shall be sold by competitive bids. The proceeds from the sales shall be deposited in the commodity distribution fund in each district and distributed in the manner specified by Section 33.009 of this code. (V.A.C.S. Art. 695c, Sec. 7-A (part).)

**Sec. 33.011. Prohibited Activities; Penalties**

(a) A person commits an offense if the person knowingly uses, alters, or transfers food stamp coupons or authorizations to purchase food stamp coupons in any manner not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the coupons or authorization cards is less than \$200 and a felony of the third degree if the value of the coupons or authorization cards is \$200 or more.

(b) A person commits an offense if the person knowingly possesses food stamp coupons or authorizations to purchase food stamp coupons when not authorized by law to possess them, knowingly redeems food stamp coupons when not authorized by law to redeem them, or knowingly redeems food stamp coupons for purposes not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the

coupons or authorization cards is less than \$200 and a felony of the third degree if the value of the coupons or cards is \$200 or more.

(c) A person commits an offense if the person knowingly possesses blank authorizations to purchase food stamp coupons when not authorized by law to possess them. An offense under this subsection is a felony of the third degree.

(d) When food stamp coupons or authorizations to purchase food stamp coupons of various values are obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the values aggregated in determining the grade of the offense. (V.A.C.S. Art. 695c, Sec. 7-B.)

## **SUBTITLE D. CHILD WELFARE AND PROTECTIVE SERVICES**

### **CHAPTER 41. CHILD WELFARE SERVICES**

#### **Section**

- 41.001. Duties of Department.**
- 41.002. County Child Welfare Boards.**
- 41.003. County Funds.**
- 41.004. Cooperation With Children's Bureau.**
- 41.005. Notification of Charters Filed With the Secretary of State.**
- 41.006. Child Welfare Service Fund.**

#### **Sec. 41.001. Duties of Department**

(a) The department shall promote the enforcement of all laws for the protection of illegitimate, dependent, neglected, and delinquent children, and shall take the initiative in all matters involving the interests of these children where adequate provision for them has not already been made.

(b) The department shall give special attention to the dissemination of information through bulletins and visits, where practical, to all agencies operating under a provision of law affecting the welfare of these children.

(c) Through the county child welfare boards, the department shall work in conjunction with the commissioners courts, juvenile boards, and all other officers and agencies involved in the protection of these children. The department may use and allot funds for the establishment and maintenance of homes, schools, and institutions for the care, protection, education, and training of these children in conjunction with a juvenile board, a county or city board, or any other agency. However, the funds must be specifically appropriated by the legislature for this purpose.

(d) The department shall visit and study the conditions in state-supported eleemosynary institutions for these children and shall make recommendations for the management and operation of the institutions which will ensure that the children receive the best possible training in contemplation of their earliest discharge from the institutions. (V.A.C.S. Art. 695a, Secs. 2, 3 (part), and 5.)

(e) The department may not spend state funds to accomplish the purposes of this chapter unless the funds have been specifically appropriated for those purposes. (V.A.C.S. Art. 695a, Secs. 2, 3 (part), and 5.)



**Sec. 41.002. County Child Welfare Boards**

(a) The commissioners court of a county may appoint a child welfare board for the county. The commissioners court and the department shall determine the size of the board and the qualifications of its members. However, the board must have at least 7 and not more than 15 members, and the members must be residents of the county. The members shall serve at the pleasure of the commissioners court and may be removed by the court for just cause. The members serve without compensation.

(b) With the approval of the department, two or more counties may establish a joint child welfare board if that action is found to be more practical in accomplishing the purposes of this chapter. The combined counties have the same powers as a single county and are subject to the same conditions and liabilities.

(c) The members of the county child welfare board shall select a presiding officer and shall perform the duties required by the commissioners court and the department to accomplish the purposes of this chapter.

(d) A county child welfare board is an entity of the department for purposes of providing coordinated state and local public welfare services for children and their families and the coordinated use of federal, state, and local funds for these services. The child welfare board shall work with the commissioners court. (V.A.C.S. Art. 695a, Secs. 4(a), (b), and (c) (part).)

**Sec. 41.003. County Funds**

The commissioners court of a county may appropriate funds from its general fund or any other fund for the administration of its county child welfare board. The court may provide for services to and support of children in need of protection or care. (V.A.C.S. Art. 695c, Sec. 40.)

**Sec. 41.004. Cooperation With Children's Bureau**

The department is the state agency designated to cooperate with the Children's Bureau of the United States Department of Health, Education, and Welfare in:

(1) establishing, extending, and strengthening public welfare services for the protection and care of homeless, dependent, and neglected children in danger of becoming delinquent, especially in rural areas;

(2) developing state services for the encouragement and assistance of adequate methods of community child welfare organizations and paying part of the cost of district, county, or other local child welfare services in rural areas and in other areas of special need; and

(3) developing necessary plans to implement the services contemplated in this section and to comply with the rules of the Children's Bureau issued and prescribed in conformity with and by virtue of the Social Security Act. (V.A.C.S. Art. 695c, Sec. 8.)

**Sec. 41.005. Notification of Charters Filed With the Secretary of State**

The secretary of state shall notify the Texas Department of Human Resources in writing of each charter filed with the secretary by a person who proposes to provide care for children under 18 years of age and who is required to be licensed by or registered with the department to provide that care. The secretary shall send a copy of the charter to the department. (V.A.C.S. Art. 695a, Sec. 9.)

**Sec. 41.006. Child Welfare Service Fund**

The child welfare service fund is a special fund in the state treasury. The fund shall be used to administer the child welfare services provided by the department. (V.A.C.S. Art. 695f.)

**CHAPTER 42. REGULATION OF CHILD-CARE FACILITIES**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sections**

- 42.001. Purpose.**
- 42.002. Definitions.**

[Sections 42.003–42.020 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

- 42.021. Division Designated.**
- 42.022. State Advisory Committee.**
- 42.023. Annual Report.**
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[Sections 42.025–42.040 reserved for expansion]

**SUBCHAPTER C. REGULATION OF CHILD-CARE FACILITIES**

- 42.041. Required License.**
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- 42.043. Rules for Immunizations.**
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- 42.053. Agency Homes.**

[Sections 42.054–42.070 reserved for expansion]

**SUBCHAPTER D. REMEDIES**

- 42.071. License Suspension.**
- 42.072. License Denial or Revocation.**
- 42.073. Closing a Facility.**
- 42.074. Injunctive Relief.**
- 42.075. Civil Penalty.**
- 42.076. Criminal Penalties.**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 42.001. Purpose**

The purpose of this chapter is to protect the health, safety, and well-being of the children of the state who reside in child-care facilities by establishing statewide minimum standards for their safety and protection and by regulating the facilities through a licensing program. It is the policy of the state to ensure the protection of all children under care in child-care facilities and to encourage and assist in the improvement of

child-care programs. It is also the intent of the legislature that freedom of religion of all citizens is inviolate, and nothing in this chapter gives a governmental agency authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of religious instruction or the curriculum of a school sponsored by a religious organization. (V.A.C.S. Art. 695a—3, Sec. 1(b).)

**Sec. 42.002. Definitions**

In this chapter:

- (1) "Child" means a person under 18 years of age.
- (2) "Division" means the division designated by the department to carry out the provisions of this chapter.
- (3) "Child-care facility" means a facility that provides care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.
- (4) "Child-care institution" means a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment camps, emergency shelters, and training or correctional schools for children.
- (5) "Foster group home" means a facility that provides care for 7 to 12 children for 24 hours a day.
- (6) "Foster family home" means a facility that provides care for not more than six children for 24 hours a day.
- (7) "Day-care center" means a facility that provides care for more than 12 children under 14 years of age for less than 24 hours a day.
- (8) "Group day-care home" means a facility that provides care for 7 to 12 children under 14 years of age for less than 24 hours a day.
- (9) "Registered family home" means a facility that regularly provides care in the caretaker's own residence for not more than six children under 14 years of age, excluding the caretaker's own children, and that provides care after school hours for not more than six additional elementary school siblings of the other children given care, but the total number of children, including the caretaker's own, does not exceed 12 at any given time.
- (10) "Family day home" means a facility that provides care for not more than six children under 14 years of age for less than 24 hours a day not in the caretaker's own residence nor in the residence of one or more of the children.
- (11) "Agency home" means a private home that provides care for not more than six children, that is used only by a licensed child-placing agency, and that meets division standards.
- (12) "Child-placing agency" means a person other than the natural parents or guardian of a child who plans for the placement of or places a child in an institution, agency home, or adoptive home.
- (13) "Facilities" includes child-care facilities and child-placing agencies.
- (14) "State of Texas" or "state" does not include political subdivisions of the state. (V.A.C.S. Art. 695a—3, Sec. 2.)

[Sections 42.003–42.020 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**Sec. 42.021. Division Designated**

(a) The department shall designate a division within the department to regulate and license child-care facilities and child-placing agencies. The division shall enforce the provisions of this chapter and the rules and standards adopted by the department under this chapter and shall carry out other responsibilities the department may delegate or assign.

(b) The commissioner of the department shall appoint as director of the division a person who:

(1) meets the qualifications required of a child-care administrator by Chapter 43 of this code;

(2) holds a graduate degree in social science or law and has five years' administrative experience in a field related to child care; or

(3) has 10 years' experience in a field related to child care, at least 5 of which must be administrative.

(c) The department shall employ sufficient personnel and provide training for the personnel to carry out the provisions of this chapter.

(d) The director may divide the state into regions for the purpose of administering this chapter. (V.A.C.S. Art. 695a—3, Sec. 3.)

**Sec. 42.022. State Advisory Committee**

(a) The State Advisory Committee on Child-Care Facilities is composed of 15 citizens of this state appointed by the commissioner.

(b) Members of the committee serve for terms of two years.

(c) The members must represent the following groups:

(1) parents, guardians, or custodians of children who use the facilities;

(2) child advocacy groups;

(3) operators of the facilities; and

(4) experts in various professional fields that are relevant to child care and development.

(d) At least three members of the division staff shall meet with the committee, and the division shall provide staff necessary for the committee.

(e) The committee shall review rules and minimum standards for child-care facilities and child-placing agencies promulgated by state agencies, and shall advise the department, the division, the council, and state agencies on problems of child-care facilities and child-placing agencies.

(f) The committee shall receive and review the annual report of the division.

(g) The committee shall meet twice a year, and the members shall receive their actual travel expenses and the state per diem. (V.A.C.S. Art. 695a—3, Sec. 16.)

**Sec. 42.023. Annual Report**

(a) The division shall send an annual report of its activities to the governor, lieutenant governor, and members of the legislature.

(b) The annual report shall include:

(1) a report by regions of applications for licensure or certification, of provisional licenses issued, denied, or revoked, of licenses issued, denied, suspended or revoked, of emergency closures and injunctions, and of the compliance of state-operated agencies with certification requirements;

(2) a summary of the amount and kind of in-service training and other professional development opportunities provided for division staff;

(3) a summary of training and other professional development opportunities offered to facilities' staffs; and

(4) a report of new administrative procedures, of the number of staff and staff changes, and of plans for the coming year.

(c) Copies of the annual report shall be available to any state citizen on request. (V.A.C.S. Art. 695a—3, Sec. 17.)

**Sec. 42.024. Administrative Procedure**

The Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes) applies to all procedures under this chapter except where it is contrary to or inconsistent with the provisions of this chapter. (V.A.C.S. Art. 695a—3, Sec. 20.)

[Sections 42.025–42.040 reserved for expansion]

**SUBCHAPTER C. REGULATION OF CHILD-CARE FACILITIES**

**Sec. 42.041. Required License**

(a) No person may operate a child-care facility or child-placing agency without a license issued by the division.

(b) This section does not apply to:

(1) a state-operated facility;

(2) an agency home;

(3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction;

(4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;

(5) a youth camp licensed by the Texas Department of Health;

(6) a hospital licensed by the Texas Department of Mental Health and Mental Retardation or the Texas Department of Health;

(7) an educational facility accredited by the Central Education Agency or the Southern Association of Colleges and Schools that operates primarily for educational purposes in grades kindergarten and above;

(8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;

(9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Central Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day; and

(10) a registered family home.

(c) A single license that lists addresses and the appropriate facilities may be issued to a child-care institution that operates noncontiguous fa-

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cilities that are nearby and that are demonstrably a single operation as indicated by patterns of staffing, finance, administrative supervision, and programs. (V.A.C.S. Art. 695a—3, Sec. 4.)

**Sec. 42.042. Rules and Standards**

(a) The department shall make rules to carry out the provisions of this chapter.

(b) The department shall conduct a comprehensive review of all rules and standards at least every six years.

(c) The department shall provide a standard procedure for receiving and recording complaints and a standard form for recording complaints.

(d) The department shall provide standard forms for applications and inspection reports.

(e) The department shall promulgate minimum standards for child-care facilities covered by this chapter that will:

(1) promote the health, safety, and welfare of children attending a facility;

(2) promote safe, comfortable, and healthy physical facilities for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities; and

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs.

(f) In promulgating minimum standards for child-care facilities, the department shall recognize the various categories of facilities, including facilities offering specialized care, and the various categories of children and their particular needs. Standards for child-care institutions must require an intake study before a child is placed in an institution. The intake study may be conducted at a community mental health and mental retardation center.

(g) In promulgating minimum standards the department may recognize and treat differently the following child-care facilities: child-caring institutions, foster homes, day-care centers, group day-care homes, family day homes, registered family homes, and agency homes.

(h) The department shall promulgate minimum standards for child-placing agencies.

(i) Before adopting minimum standards, the division shall present the proposed standards to the State Advisory Committee on Child-Care Facilities for review and comment, and shall send a copy of the proposed standards to each licensee covered by the proposed standards at least 60 days before the standards take effect to provide the licensee an opportunity to review and to send written suggestions to the council and the department.

(j) The department may waive compliance with a minimum standard in a specific instance if it determines that the economic impact of compliance is sufficiently great to make compliance impractical.

(k) The department may not regulate or attempt to regulate or control the content or method of any instruction or curriculum of a school sponsored by a religious organization. (V.A.C.S. Art. 695a—3, Sec. 5.)

**Sec. 42.043. Rules for Immunizations**

(a) The department shall make rules for the immunization of children admitted to facilities.

(b) The department shall require that each child at an appropriate age have a test for tuberculosis and be immunized against diphtheria, tetanus, poliomyelitis, rubella, and rubcola. The immunization must be effective on the date of first entry into the facility. However, a child may be provisionally admitted if the required immunizations have begun and are completed as rapidly as medically feasible.

(c) The Texas Department of Health shall make rules for the provisional admission of children to facilities and may modify or delete any of the immunizations listed in Subsection (b) of this section or require additional immunizations as a requirement for admission to a facility.

(d) No immunization may be required for admission to a facility if a person applying for a child's admission submits one of the following affidavits:

(1) an affidavit signed by a licensed physician stating that the immunization would be injurious to the health and well-being of the child or a member of the child's family or household; or

(2) an affidavit signed by the child's parent or guardian stating that the immunization conflicts with the tenets and practices of a recognized religious organization of which the applicant is an adherent or a member.

(e) Each facility shall keep an individual immunization record for each child admitted, and the records shall be open for inspection by the division at all reasonable times.

(f) The Texas Department of Health shall provide the immunizations required by this section to children in areas where there is no local provision of these services. (V.A.C.S. Art. 695a—3, Sec. 6.)

#### Sec. 42.044. Inspections

(a) An authorized representative of the division may visit a facility during operating hours to investigate, inspect, and evaluate.

(b) The division shall inspect all licensed or certified facilities at least once a year and may inspect other facilities as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

(c) The division must investigate a facility when a complaint is received. The division representative must notify the facility's director or authorized representative when a complaint is being investigated and report in writing the results of the investigation to the director or the director's authorized representative.

(d) The division may call on political subdivisions and governmental agencies for assistance within their authorized fields. (V.A.C.S. Art. 695a—3, Sec. 7.)

#### Sec. 42.045. Records

(a) A person who operates a licensed or certified facility shall maintain individual child development records, individual health records, statistical records, and complete financial records.

(b) A person who operates a licensed facility shall have an annual audit by a certified public accountant of the facility's books. A copy of the accountant's statement of income and disbursements must accompany an application for a license. This subsection does not apply to a facility that provides care for less than 24 hours a day or to an agency home. (V.A.C.S. Art. 695a—3, Sec. 10.)

#### Sec. 42.046. License Application

(a) An applicant for a license to operate a child-care facility or child-placing agency shall submit to the division a completed application on a form provided by the division.

(b) The division shall supply the applicant the application form and a copy of the appropriate minimum standards.

(c) After receiving an application, the division shall investigate the applicant and the plan of care for children.

(d) The division shall complete the investigation and decide on an application within two months after the date the division receives an application. (V.A.C.S. Art. 695a—3, Secs. 11(a), (b), (c), and (d).)

**Sec. 42.047. Consultations**

(a) The department shall offer consultation to potential applicants, applicants, and license and certification holders about meeting and maintaining standards for licensing and certification and achieving programs of excellence in child care.

(b) The department shall offer consultation to prospective and actual users of facilities. (V.A.C.S. Art. 695a—3, Sec. 8.)

**Sec. 42.048. Advisory Opinions**

(a) The director of the division may give an advisory opinion on whether or not a planned facility or a planned change in an existing facility complies with the division's rules and minimum standards.

(b) A written opinion authorized by Subsection (a) of this section is binding on the division as a declaratory order if it is signed by the division director and the division representative administering this chapter in a division region, and if an applicant or license holder has acted in reliance on the opinion. (V.A.C.S. Art. 695a—3, Sec. 9.)

**Sec. 42.049. Licensing**

(a) The division shall issue a license after determining that an applicant has satisfied all requirements.

(b) When issuing a license, the division may impose restrictions on a facility, including but not limited to the number of children to be served and the type of children to be served.

(c) The division may grant a variance of an individual standard set forth in the applicable standards for good and just cause.

(d) A license holder must display a license issued under this chapter in a prominent place at the facility.

(e) A license issued under this chapter is not transferable and applies only to the operator and facility location stated in the license application. A change in location or ownership automatically revokes a license.

(f) A biennial license must be issued if the division determines that a facility meets all requirements. The evaluation shall be based on a specified number of visits to the facility and a review of all required forms and records. (V.A.C.S. Art. 695a—3, Secs. 11(e), (f), (g), (h), and (i); Sec. 13.)

**Sec. 42.050. License Renewal**

(a) A license holder may apply for a new license in compliance with the requirements of this chapter and the rules promulgated by the division.

(b) The application for a new license must be completed and decided on by the division before the expiration of the license under which a facility is operating.

(c) The division shall evaluate the application for a new license to determine if all licensing requirements are met. The evaluation must include a specified number of visits to the facility and a review of all required forms and records. (V.A.C.S. Art. 695a—3, Sec. 11(j).)



**Sec. 42.051. Provisional License**

(a) The division shall issue a provisional license when a facility's plans meet the department's licensing requirements and one of the following situations exists:

(1) the facility is not currently operating;

(2) the facility is not licensed for the location stated in the application; or

(3) there is a change in ownership of the facility.

(b) A provisional license is valid for six months from the date it is issued and is not renewable. (V.A.C.S. Art. 695a—3, Sec. 12.)

**Sec. 42.052. Certification and Registration**

(a) A state-operated child-care facility or child-placing agency must receive certification of approval from the division. The certification of approval must be renewed every two years.

(b) To be certified, a facility must comply with the department's rules and standards and any provisions of this chapter that apply to a licensed facility of the same category. The operator of a certified facility must display the certification in a prominent place at the facility.

(c) A registered family home must be registered with the division.

(d) To be registered with the division, a registered family home must comply with the department's rules and standards and any provision of this chapter that applies to a registered family home. (V.A.C.S. Art. 695a—3, Sec. 14.)

**Sec. 42.053. Agency Homes**

(a) An agency home is considered part of the child-placing agency that operates the agency home for purposes of licensing.

(b) The operator of a licensed agency shall display a copy of the license in a prominent place in the agency home used by the agency.

(c) An agency home shall comply with all provisions of this chapter and all department rules and standards that apply to a child-care facility caring for a similar number of children for a similar number of hours each day.

(d) The division shall revoke or suspend the license of a child-placing agency if an agency home operated by the licensed agency fails to comply with Subsection (c) of this section. (V.A.C.S. Art. 695a—3, Sec. 15.)

[Sections 42.054–42.070 reserved for expansion]

**SUBCHAPTER D. REMEDIES**

**Sec. 42.071. License Suspension**

(a) The division may suspend the license of a facility that has temporarily ceased operation but has definite plans for starting operations again within the time limits of the issued license.

(b) The division may suspend a facility's license for a definite period rather than deny or revoke the license if the division finds repeated non-compliance with standards that do not endanger the health and safety of children. To qualify for license suspension under this subsection, a facility must suspend its operations and show that standards can be met within the suspension period.

(c) The division shall revoke the license of a facility that does not comply with standards after a license suspension. (V.A.C.S. Art. 695a—3, Sec. 18.)

**Sec. 42.072. License Denial or Revocation**

(a) The division shall deny or revoke the license or certification of approval of a facility that does not comply with the requirements of this

chapter, the standards and rules of the department, or the specific terms of the license or certification.

(b) The division shall notify the person operating or proposing to operate a facility of the reasons for the denial or revocation and of the person's right to appeal the decision within 30 days after receiving the notice.

(c) A person who wishes to appeal a license denial or revocation shall notify the director by certified mail within 30 days after receiving the notice required in Subsection (b) of this section. The person shall send a copy of the notice of appeal to the assigned division representative.

(d) Within 14 days after the date the appeal notification was mailed, the director shall appoint an advisory review board to hear the appeal or notify the person requesting the appeal that the request is denied.

(e) Within 14 days after notifying a person that an advisory review board will hear the case, the director shall appoint five of the person's peers to the board and set a date for the hearing. The date for the hearing must be within 28 days after the date the board members are appointed.

(f) The advisory review board shall hear the appeal and render its opinion to the director within seven days after the last day of the hearing. The board members shall receive actual travel expenses and the state per diem for each day of the hearing.

(g) A committee composed of the director, the division representative responsible for establishing standards, and the division representative administering this chapter in the region where the facility in question is located shall review the opinion. The committee shall make a decision within 14 days after receiving the opinion and shall notify, by certified mail, the person who appealed.

(h) A person whose license has been denied or revoked may challenge the committee's decision by filing a suit in a district court of Travis County or the county in which the person's facility is located within 30 days after receiving the committee's decision. The trial shall be de novo.

(i) Records of the department's hearing shall be kept for one year after a committee decision is rendered. On request, and at the person's own expense, the division shall supply a copy of the verbatim transcript of the advisory board hearing to a person appealing a license denial or revocation in district court.

(j) A person may continue to operate a facility during an appeal of a license denial or revocation unless the division has sought injunctive relief under Section 42.074 or civil penalties under Section 42.075 of this code. (V.A.C.S. Art. 695a—3, Sec. 19.)

**Sec. 42.073. Closing a Facility**

(a) The division may close the facility and place the children attending the facility in another facility if the division finds violations of this chapter or violations of the department's rules and standards that create an immediate danger for children.

(b) A division representative who finds conditions described in Subsection (a) of this section shall immediately notify the director and request an immediate inspection of the facility by the director or the director's designee.

(c) The division shall report to the governor and the commissioner of the department when a state-operated facility is found in violation of this

chapter or the department's rules and standards and the violation threatens serious harm to the children in the facility.

(d) Closing a facility under this section is an emergency measure. The division shall seek an injunction against continued operation of the facility after closing a facility under this section. (V.A.C.S. Art. 695a—3, Sec. 21.)

**Sec. 42.074. Injunctive Relief**

(a) When it appears that a person has violated, is violating, or is threatening to violate the licensing, certification, or registration requirements of this chapter or the department's licensing, certification, or registration rules and standards, the division may file a suit in a district court in Travis County or in the county where the facility is located for assessment and recovery of civil penalties under Section 42.075 of this code, for injunctive relief, including a temporary restraining order, or for both injunctive relief and civil penalties.

(b) The district court shall grant the injunctive relief the facts may warrant.

(c) At the division's request, the attorney general shall conduct a suit in the name of the State of Texas for injunctive relief, to recover the civil penalty, or for both injunctive relief and civil penalties as authorized by Subsection (a) of this section. (V.A.C.S. Art. 695a—3, Sec. 22.)

**Sec. 42.075. Civil Penalty**

(a) A person is subject to a civil penalty of not less than \$50 nor more than \$100 for each day of violation and for each act of violation if the person:

(1) threatens serious harm to a child in a facility by violating a provision of this chapter or a department rule or standard;

(2) violates a provision of this chapter or a department rule or standard three or more times within a 12-month period; or

(3) places a public advertisement for an unlicensed facility.

(b) The civil penalty authorized by this section is cumulative and in addition to the criminal penalties and injunctive relief provided by this chapter. (V.A.C.S. Art. 695a—3, Sec. 23.)

**Sec. 42.076. Criminal Penalties**

(a) A person who operates a child-care facility or child-placing agency without a license commits a Class B misdemeanor.

(b) A person who places a public advertisement for an unlicensed facility commits a Class C misdemeanor. (V.A.C.S. Art. 695a—3, Sec. 24.)

**CHAPTER 43. REGULATION OF CHILD-CARE ADMINISTRATORS**

**Section**

- 43.001. Definitions.
- 43.002. Advisory Council.
- 43.003. License Required.
- 43.004. Qualifications for License.
- 43.005. Rules.
- 43.006. Examination Fee.
- 43.007. License Application.
- 43.008. Licensing.
- 43.009. License Renewal.

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Section

43.010. License Revocation.

43.011. Appeals.

43.012. Penalty.

**Sec. 43.001. Definitions**

In this chapter:

(1) "Child-care institution" means a profit or nonprofit children's home, orphanage, institution, or other place that receives and provides 24-hour-a-day care for more than six children who are dependent, neglected, handicapped, delinquent, in danger of becoming delinquent, or in need of group care.

(2) "Child-care administrator" means a person who supervises and exercises direct administrative control over a child-care institution and who is responsible for its program and personnel, whether or not the person has an ownership interest in the institution or shares duties with other persons. (V.A.C.S. Art. 695a—1, Sec. 1.)

**Sec. 43.002. Advisory Council**

(a) The board shall appoint an advisory council on child-care administration composed of six persons with experience in the fields of child care or social work.

(b) Each member of the council serves a term of two years from the date of appointment. The members are entitled to reimbursement for actual expenses incurred in performing official duties.

(c) The council shall advise the board on licensing child-care administrators, including the content of the examination administered to license applicants. (V.A.C.S. Art. 695a—1, Sec. 9.)

**Sec. 43.003. License Required**

A person may not serve as a child-care administrator of a child-care institution without a license issued by the department under this chapter. (V.A.C.S. Art. 695a—1, Sec. 2.)

**Sec. 43.004. Qualifications for License**

To be eligible for a child-care administrator's license a person must:

(1) present evidence in writing of good moral character, ethical commitment, and sound physical and emotional health;

(2) pass an examination devised and administered by the department that demonstrates competence in the field of child-care administration;

(3) have one year of experience in management or supervision of child-care personnel and programs; and

(4) have one of the following educational and experience qualifications:

(A) a master's or doctor of philosophy degree in social work or other area of study;

(B) a bachelor's degree and two years' experience in child care or a closely related field;

(C) an associate degree from a junior college and four years' experience in child care or a closely related field; or

(D) a high school diploma or its equivalent and six years' experience in child care or a closely related field. (V.A.C.S. Art. 695a—1, Secs. 3(a), (b), (c), (d), (e) (part).)

**Sec. 43.005. Rules**

The board may make rules to administer the provisions of this chapter. (V.A.C.S. Art. 695a—1, Sec. 10.)

**Sec. 43.006. Examination Fee**

To cover the cost of administering the examination, the department shall charge a fee of \$25 to each person taking the examination for a license. (V.A.C.S. Art. 695a—1, Sec. 3(e) (part).)

**Sec. 43.007. License Application**

(a) A person who has the education and experience required by Section 43.004 of this code may apply to the department for a license.

(b) The applicant shall send a license fee of \$25 with the application. (V.A.C.S. Art. 695a—1, Sec. 4 (part).)

**Sec. 43.008. Licensing**

(a) The department shall issue a license to a person who has satisfied all the licensing requirements.

(b) The license is valid for a period of two years from the date issued. (V.A.C.S. Art. 695a—1, Sec. 4 (part).)

**Sec. 43.009. License Renewal**

(a) To be eligible for license renewal, a license holder shall present evidence to the department of participation in a program of continuing education approximating 15 actual hours of formal study during the two-year period before the renewal.

(b) The continuing education requirement may be fulfilled by studies in the areas of legal aspects of child care, concepts related to the field of social work, or other subjects approved by the department.

(c) The fee for a license renewal is \$25. (V.A.C.S. Art. 695a—1, Sec. 5.)

**Sec. 43.010. License Revocation**

The department may revoke a license if the license holder is:

- (1) convicted of a felony;
- (2) convicted of a misdemeanor involving fraud or deceit;
- (3) addicted to a dangerous drug or intemperate in the use of alcohol; or
- (4) grossly negligent in performing duties as a child-care administrator. (V.A.C.S. Art. 695a—1, Sec. 7.)

**Sec. 43.011. Appeals**

(a) A person whose license application is denied or whose license is revoked is entitled to written notice of the reasons and may request that the department provide a hearing.

(b) The hearing shall be held within 30 days after the date the department receives the request.

(c) If the hearing results in the department upholding the license denial or revocation, the person may challenge the department's decision by filing suit in a district court in the county where the person resides within 30 days after the date the person receives notice of the department's final decision.

(d) The trial shall be de novo. (V.A.C.S. Art. 695a—1, Sec. 8.)

**Sec. 43.012. Penalty**

A person who serves as a child-care administrator without the license required by this chapter commits a Class C misdemeanor and may be fined not less than \$50 nor more than \$100. (V.A.C.S. Art. 695a—1, Sec. 11.)

**CHAPTER 44. ADMINISTRATION OF FEDERALLY  
ESTABLISHED DAY-CARE PROGRAMS**

**Sections**

**44.001. Designated Agency.**

**44.002. Administrative Rules.**

**44.003. Administration of Federal-Local Program.**

**Sec. 44.001. Designated Agency**

The department is the state agency designated to administer a day-care program established by federal law and financed partially or totally by federal funds. (V.A.C.S. Art. 695a—4, Sec. 1.)

**Sec. 44.002. Administrative Rules**

(a) The commissioner shall promulgate rules to carry out the administrative provisions of the program consistent with federal law and regulations.

(b) The rules must include procedures to allow operators of day-care centers to review and comment on proposed rules and policies.

(c) The rules must establish procedures for input by the parents of the children in a day-care center into the operation of the center.

(d) The commissioner may promulgate eligibility standards for admittance into the program, but the standards must allow for exceptions where necessary to maintain family self-sufficiency and integrity. (V.A.C.S. Art. 695a—4, Sec. 2.)

**Sec. 44.003. Administration of Federal-Local Program**

(a) If the program is to be funded through political subdivisions of the state or local agencies approved by the department matching federal grants, the department shall promulgate procedures for effective delivery of services consistent with this section and with federal law and regulations.

(b) If the services are provided through contracting with operators of day-care centers on request from political subdivisions or local agencies, the department may not promulgate standards for selection of the type of centers more restrictive than required by federal law or regulations.

(c) The department shall establish an accounting system consistent with federal law and regulations which will provide that an operator of a day-care center contracting with the department:

(1) shall receive prepayment in accordance with policies and procedures mutually agreed on by the state comptroller of public accounts and the department; and

(2) shall be paid on the basis of legitimate and reasonable expenses, insofar as possible, given federal regulations and department policy, instead of being paid on the basis of the number of children attending the center, provided that on being monitored by the department, the contracting operator can substantiate that there were sufficient preparations in the development of the services offered. (V.A.C.S. Art. 695a—4, Sec. 3.)

**CHAPTER 45. INTERSTATE PLACEMENT OF CHILDREN****SUBCHAPTER A. PLACEMENT OF CHILDREN  
FROM ANOTHER STATE****Section**

- 45.001. Definitions.
- 45.002. Required Notice of Intention to Place a Child.
- 45.003. Responsibilities of Sending Agency.
- 45.004. Delinquent Child.
- 45.005. Private Charitable Agencies.
- 45.006. Exemptions.
- 45.007. Penalties.

[Sections 45.008–45.020 reserved for expansion]

**SUBCHAPTER B. INTERSTATE COMPACT ON THE  
PLACEMENT OF CHILDREN**

- 45.021. Adoption of Compact; Text.
- 45.022. Definitions.
- 45.023. Financial Responsibility for Child.
- 45.024. Approval of Placement or Discharge.
- 45.025. Placement in Another State.
- 45.026. Compact Administrator.

**SUBCHAPTER A. PLACEMENT OF CHILDREN  
FROM ANOTHER STATE****Sec. 45.001. Definitions**

In this subchapter:

(1) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.

(2) "Child-care facility" means a facility that provides care, training, education, custody, treatment, or supervision for a minor child who is not related by blood, marriage, or adoption to the owner or operator of the facility, whether or not the facility is operated for profit, and whether or not the facility makes a charge for the service offered by it.

(3) "Placement" means an arrangement for the care of a child in a family free, in a boarding home, or in a child-care facility or institution, including an institution caring for the mentally ill, mentally defective, or epileptic, but does not include an institution primarily educational in character or a hospital or other primarily medical facility.

(4) "Sending agency" means a state, a subdivision of a state, an officer or employee of a state or a subdivision of a state, a court of a state, or a person, partnership, corporation, association, charitable agency, or other entity, located outside this state, which sends, brings, or causes to be sent or brought a child into this state. (V.A. C.S. Art. 695a—5, Sec. 1 (part).)

**Sec. 45.002. Required Notice of Intention to Place a Child**

(a) Prior to the placement in this state of a child from another state, the sending agency shall furnish the department written notice of its intention to place the child in this state. The notice must contain:

- (1) the name and the date and place of birth of the child;

(2) the names and addresses of the child's parents or legal guardian, and the legal relationship of the named persons to the child;

(3) the name and address of the person, agency, or institution with which the sending agency proposes to place the child; and

(4) a full statement of the reasons for the placement and evidence of the authority under which the placement is proposed to be made.

(b) After receipt of a notice provided for in Subsection (a) of this section, the commissioner may request additional or supporting information considered necessary from an appropriate authority in the state where the child is located.

(c) No sending agency may send, bring, or cause to be sent or brought into this state a child for placement until the commissioner notifies the sending agency in writing that the proposed placement does not appear to be contrary to the best interests of the child.

(d) The commissioner may not approve the placement in this state of a child from outside this state without the concurrence of the individuals with whom the child is proposed to be placed or the head of an institution with which the child is proposed to be placed.

(e) No child-care facility in this state may receive a child for placement unless the placement conforms to requirements of this subchapter. (V.A.C.S. Art. 695a—5, Sec. 2.)

**Sec. 45.003. Responsibilities of Sending Agency**

(a) After placement in this state, the sending agency retains jurisdiction over the child sufficient to determine all matters relating to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the commissioner. The sending agency may cause the child to be returned to it or transferred to another location, except as provided by Subsection (e) of this section.

(b) The sending agency has financial responsibility for support and maintenance of the child during each period of placement in Texas. If the sending agency fails wholly or in part to provide financial support and maintenance during placement, the commissioner may bring suit under Section 14.05, Family Code, and may file a complaint with the appropriate prosecuting attorney, claiming a violation of Section 25.05, Penal Code.

(c) After failure of the sending agency to provide support or maintenance, if the commissioner determines that financial responsibility is unlikely to be assumed by the sending agency, or by the child's parents or guardian, if not the sending agency, the commissioner shall cause the child to be returned to the sending agency.

(d) After failure of the sending agency to provide support or maintenance, the department shall assume financial responsibility for the child until responsibility is assumed again by the sending agency, until it is assumed by the child's parents or guardian, or until the child is safely returned to the sending agency.

(e) The commissioner may not concur in the discharge of a child placed in a public institution in this state without the concurrence of the head of the institution. (V.A.C.S. Art. 695a—5, Sec. 3.)



**Sec. 45.004. Delinquent Child**

No child adjudicated delinquent in another state may be placed in Texas unless the child has received a court hearing, after notice to a parent or guardian, at which the child had an opportunity to be heard and the court found that:

- (1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and
- (2) institutional care in Texas is in the best interests of the child and will not produce undue hardship. (V.A.C.S. Art. 695a—5, Sec. 4.)

**Sec. 45.005. Private Charitable Agencies**

This subchapter does not prevent a private charitable agency authorized to place children in this state from performing services or acting as agent in this state for a private charitable agency in a sending state, or prevent the agency in this state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of a sending agency, without altering financial responsibility as provided by Section 45.003 of this code. (V.A.C.S. Art. 695a—5, Sec. 5.)

**Sec. 45.006. Exemptions**

This subchapter does not apply to:

- (1) the sending or bringing of a child into this state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian, and the leaving of the child with a person described in this subdivision or with a nonagency guardian in this state; or
- (2) the placement, sending, or bringing of a child into this state under the provisions of an interstate compact to which both Texas and the state from which the child is sent or brought are parties. (V.A.C.S. Art. 695a—5, Sec. 6.)

**Sec. 45.007. Penalties**

(a) An individual or corporation that violates Subsection (a) or (c) of Section 45.002 of this code is guilty of a Class B misdemeanor.

(b) A child-care facility in this state that violates Subsection (e) of Section 45.002 of this code is guilty of a Class B misdemeanor. On conviction, the court shall revoke any license to operate as a child-care facility or child-care institution issued the facility by the department. (V.A.C.S. Art. 695a—5, Sec. 7.)

[Sections 45.008–45.020 reserved for expansion]

**SUBCHAPTER B. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN****Sec. 45.021. Adoption of Compact; Text**

The Interstate Compact on the Placement of Children is adopted by this state and entered into with all other jurisdictions joining therein in form substantially as follows:

**INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN****ARTICLE I. PURPOSE AND POLICY**

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

- (a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons

or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

## ARTICLE II. DEFINITIONS

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.

(b) "Sending agency" means a party state, officer, or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

## ARTICLE III. CONDITIONS FOR PLACEMENT

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) the name, date, and place of birth of the child;

(2) the identity and address or addresses of the parents or legal guardian;

(3) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(4) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to Paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

#### **ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT**

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

#### **ARTICLE V. RETENTION OF JURISDICTION**

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in Paragraph (a) hereof.

**ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN**

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

- (1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and
- (2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

**ARTICLE VII. COMPACT ADMINISTRATOR**

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

**ARTICLE VIII. LIMITATIONS**

This compact shall not apply to:

- (a) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;
- (b) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

**ARTICLE IX. ENACTMENT AND WITHDRAWAL**

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

**ARTICLE X. CONSTRUCTION AND SEVERABILITY**

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is de-

clared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (V.A.C.S. Art. 695a—2, Sec. 1.)

**Sec. 45.022. Definitions**

In this subchapter:

(1) "Appropriate public authorities," with reference to this state, means the Commissioner of the Texas Department of Human Resources.

(2) "Appropriate authority in the receiving state," with reference to this state, means the Commissioner of the Texas Department of Human Resources.

(3) "Executive head," with reference to this state, means the governor.

(4) "Compact" means the Interstate Compact on the Placement of Children. (V.A.C.S. Art. 695a—2, Sec. 2 (part).)

**Sec. 45.023. Financial Responsibility for Child**

(a) Financial responsibility for a child placed as provided in the compact is determined, in the first instance, as provided in Article V of the compact. After partial or complete default of performance under the provisions of Article V assigning financial responsibility, the commissioner may bring suit under Section 14.05, Family Code, and may file a complaint with the appropriate prosecuting attorney, claiming a violation of Section 25.05, Penal Code.

(b) After default, if the commissioner determines that financial responsibility is unlikely to be assumed by the sending agency or the child's parents, the commissioner shall cause the child to be returned to the sending agency.

(c) After default, the department shall assume financial responsibility for the child until it is assumed by the child's parents, or until the child is safely returned to the sending agency. (V.A.C.S. Art. 695a—2, Sec. 3.)

**Sec. 45.024. Approval of Placement or Discharge**

The commissioner may not approve the placement of a child in this state without the concurrence of the individuals with whom the child is proposed to be placed or the head of an institution with which the child is proposed to be placed. The commissioner may not approve the discharge of a child placed in a public institution in this state without the concurrence of the head of the institution. (V.A.C.S. Art. 695a—2, Sec. 4.)

**Sec. 45.025. Placement in Another State**

A juvenile court may place a delinquent child in an institution in another state as provided by Article VI of the compact. After placement in another state, the court retains jurisdiction of the child as provided by Article V of the compact.\* (V.A.C.S. Art. 695a—2, Sec. 5.)

**Sec. 45.026. Compact Administrator**

The governor shall appoint the commissioner as compact administrator. (V.A.C.S. Art. 695a—2, Sec. 6.)

**CHAPTER 46. CHILD SUPPORT COLLECTION, PARENT  
LOCATOR, AND PATERNITY DETERMINATION  
SERVICES**

**Section**

**46.001. Administration of Statewide Plan for Child Support.**

**46.002. Powers and Duties of Department.**

**46.003. Assignment of Right to Support.**

**46.004. Fees.**

**46.005. Disposition of Funds.**

**46.006. Confidentiality of Records.**

**Sec. 46.001. Administration of Statewide Plan for Child Support**

The department is the state agency designated to administer a statewide plan for child support to provide child support collection, parent locator, and paternity determination services which will enable it to participate in programs established by federal law. (V.A.C.S. Art. 695c, Sec. 18-B(a).)

**Sec. 46.002. Powers and Duties of Department**

(a) The department may:

(1) accept, transfer, and expend funds made available by the federal or state government or by another public or private source for the purpose of carrying out the provisions of this chapter;

(2) promulgate rules for the provision of child support services;

(3) initiate legal actions needed to implement the provisions of this chapter;

(4) enter into contracts or agreements necessary to administer this chapter; and

(5) request agencies of the state and its political subdivisions to search their records to help locate absent parents.

(b) The department may assist in the judicial determination of the paternity of an illegitimate child whose support rights have been assigned to the department.

(c) The department shall attempt to locate absent parents and shall cooperate with other governmental agencies in locating the parents. (V. A.C.S. Art. 695c, Secs. 18-B(b) and (e).)

**Sec. 46.003. Assignment of Right to Support**

(a) An applicant for or recipient of financial assistance under Chapter 31 of this code shall assign to the department any rights to support from any other person which the applicant or recipient may have in his own behalf or for a child for whom the applicant or recipient is claiming assistance, including the right to the amount accrued at the time the assignment is executed. The department may distribute support payments or parts of payments received by it to the family for whom the payments are made or may use the payments to provide assistance and services to and on behalf of needy dependent children.

(b) If an assignment has been made pursuant to this section, child support payments shall be made to the department. If a court has ordered support payments to be made to an applicant for or recipient of financial assistance who has assigned support rights, the department may file notice of the assignment with the court ordering the payments. The notice must include:

(1) a statement that the assignment has been made;

(2) the name of the child and the caretaker for whom support has been ordered by the court;

(3) the style and cause number of the case in which support was ordered; and

(4) a request that the payments ordered be made to the department.

(c) On receipt of the notice and without a requirement of a hearing, the court shall order that the payments be made to the department. (V.A.C.S. Art. 695c, Secs. 18-B(c) and (d).)

**Sec. 46.004. Fees**

The department on request may provide parent locator, child support collection, or paternity determination services available to a person other than an applicant for or recipient of financial assistance under Chapter 31 of this code. The department may charge a reasonable application fee and recover costs for the services provided. (V.A.C.S. Art. 695c, Sec. 18-B(f).)

**Sec. 46.005. Disposition of Funds**

(a) The department shall deposit money received under assignments or as fees pursuant to this chapter in a special fund in the state treasury or in accounts in financial institutions. The department may spend these funds for the administration of this chapter or for the provision of assistance to and on behalf of needy dependent children.

(b) All other funds received pursuant to this chapter shall be deposited in a special fund in the state treasury. (V.A.C.S. Art. 695c, Sec. 18-B(g).)

**Sec. 46.006. Confidentiality of Records**

All files and records on recipients of benefits provided under this chapter and on an alleged father of an illegitimate child are confidential. Release of information from the files and records shall be restricted to purposes directly connected with the administration of the child support collection, paternity determination, parent locator, or aid to families with dependent children programs. The department by rule may provide for the release of information to public officials. (V.A.C.S. Art. 695c, Sec. 18-B(h).)

## CHAPTER 47. ADOPTION SERVICES FOR HARD-TO-PLACE CHILDREN

**Section**

47.001. Definition.

47.002. Adoption Services Program.

47.003. Dissemination of Information.

47.004. Financial Assistance.

47.005. Funds.

**Sec. 47.001. Definition**

In this chapter, "hard-to-place child" means a child who is three years of age or older and who is difficult to place in an adoptive home because of age, race, color, ethnic background, language, or physical, mental, or emotional handicap, or because he or she is a member of a sibling group that should be placed in the same home. (V.A.C.S. Art. 46b—2, Secs. 1(part) and 2.)

**Sec. 47.002. Adoption Services Program**

(a) The department shall administer a program designed to promote the adoption of hard-to-place children by providing information to prospective adoptive parents concerning the availability of the relinquished children, assisting the parents in completing the adoption process, and

providing financial assistance necessary for the parents to adopt the children. The legislature intends that the program benefit hard-to-place children residing in foster homes at state or county expense by providing them with the stability and security of permanent homes and that the costs paid by the state and counties for foster home care for the children be reduced.

(b) The program shall be carried out by licensed adoption agencies or county child-care or welfare units pursuant to rules adopted by the department.

(c) The department shall keep records necessary to evaluate the program's effectiveness in encouraging and promoting the adoption of hard-to-place children. (V.A.C.S. Art. 46b—2, Secs. 1(part) and 3.)

**Sec. 47.003. Dissemination of Information**

The department, county child-care or welfare units, and licensed adoption agencies shall disseminate information to prospective adoptive parents concerning the availability for adoption of hard-to-place children and the existence of financial assistance for parents who adopt them. Special effort shall be made to disseminate the information to families that have lower income levels or that belong to disadvantaged groups. (V.A.C.S. Art. 46b—2, Sec. 4 (part).)

**Sec. 47.004. Financial Assistance**

(a) Adoption fees for a hard-to-place child may be waived.

(b) The adoption of a hard-to-place child may be subsidized by an amount not exceeding the amount that would be paid for foster home care for the child if not adopted. The need for the subsidy shall be determined by the department under its rules.

(c) The county shall pay the subsidy if the county is responsible for the child's foster home care at the time of the adoption. The state shall pay the subsidy if at the time of the adoption the child is receiving aid under the department's aid to families with dependent children program or the department is managing conservator for the child. (V.A.C.S. Art. 46b—2, Secs. 4 (part) and 5.)

**Sec. 47.005. Funds**

(a) The department shall actively seek and use federal funds available for the purposes of this chapter.

(b) Gifts or grants from private sources for the purposes of this chapter shall be used to support the program. (V.A.C.S. Art. 46b—2, Sec. 6.)



**TITLE 3. FACILITIES AND SERVICES  
FOR CHILDREN****SUBTITLE A. FACILITIES FOR CHILDREN****CHAPTER 61. TEXAS YOUTH COUNCIL****SUBCHAPTER A. GENERAL PROVISIONS****Section**

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[Sections 61.085–61.090 reserved for expansion]

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**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 61.001. Definitions**

In this chapter:

- (1) "Council" means the Texas Youth Council.
- (2) "Chairman" means the chairman of the council.
- (3) "Executive director" means the executive director of the council.
- (4) "Court" means a juvenile court.
- (5) "Delinquent child" means a child adjudged to be a delinquent child under Section 54.03 of the Family Code. (V.A.C.S. Art. 5143d, Sec. 3.)

**Sec. 61.002. Purpose**

The purpose of this chapter is to provide for administration of the state's correctional facilities for delinquent children, to provide a program of constructive training aimed at rehabilitation and reestablishment in society of children adjudged delinquent by the courts of this state and committed to the Texas Youth Council, and to provide active parole super-

vision for delinquent children until officially discharged from custody of the Texas Youth Council. (V.A.C.S. Art. 5143d, Sec. 1 (part).)

[Sections 61.003–61.010 reserved for expansion]

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

##### Sec. 61.011. Texas Youth Council

The Texas Youth Council is an agency of the state. (V.A.C.S. Art. 5143d, Sec. 4(a) (part).)

##### Sec. 61.012. Members

(a) The council consists of six members appointed by the governor with the consent of the senate.

(b) Members of the council must be citizens who are recognized within their communities for their interest in youth.

(c) The members hold office for staggered terms of six years, with the terms of two members expiring every two years.

(d) A member is eligible for reappointment. (V.A.C.S. Art. 5143d, Secs. 4(a) (part) and (b) (part).)

##### Sec. 61.013. Presiding Officer; Meetings

(a) The council shall elect one member presiding officer, who shall preside over meetings of the council.

(b) The council shall meet at least four times each year.

(c) A meeting shall be held on the call of the chairman or on the request of four members at the time and place designated by the chairman. (V.A.C.S. Art. 5143d, Secs. 4(d), 5(a).)

##### Sec. 61.014. Quorum

Four members constitute a quorum for the exercise of functions of the council not delegated to the executive director or other employees. (V.A.C.S. Art. 5143d, Sec. 5(e).)

##### Sec. 61.015. Per Diem; Expenses

Members are entitled to receive a per diem of \$35 for not more than 90 days in any fiscal year, plus reimbursement for actual expenses incurred while on council business. (V.A.C.S. Art. 5143d, Secs. 4(b) (part) and (c) (part).)

##### Sec. 61.016. Office

The council shall have its office wherever it chooses, in a building designated and approved by the State Board of Control. (V.A.C.S. Art. 5143d, Sec. 4(e).)

##### Sec. 61.017. Executive Director

(a) The council shall employ an executive director to serve at the will of the board.

(b) The executive director shall devote full time to the work of the council.

(c) The executive director is entitled to actual expenses while on council business. (V.A.C.S. Art. 5143d, Secs. 4(c) (part) (g) (part).)

##### Sec. 61.018. Superintendents

(a) The council shall employ a superintendent for each institution under its control.

(b) The superintendent for any institution exclusively for the care of girls must be a woman.

(c) To qualify for the position of superintendent, a person must be of high moral character, education, and training, and must be able to recommend and develop an aggressive program for youth rehabilitation.

(d) A superintendent shall take the official oath and shall execute a bond in the sum of \$10,000, payable to the governor. The bond must be

conditioned on the faithful performance of the duties of the office and must be approved by the attorney general. (V.A.C.S. Art. 5143d, Secs. 20 (part) and 22.)

**Sec. 61.019. Delegation of Powers and Duties**

Any power, duty, or function of the council may be exercised and performed by the executive director or any member or employee designated or assigned by the council or by the executive director. (V.A.C.S. Art. 5143d, Sec. 5(d).)

**Sec. 61.020. Review**

The council is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the council is abolished and this chapter expires effective September 1, 1987. (V.A.C.S. Art. 5143d, Sec. 4(h).)

**SUBCHAPTER C. POWERS AND DUTIES**

**Sec. 61.031. Continuing Study**

The council shall carry on a continuing study of the problem of juvenile delinquency in this state and shall seek to focus public attention on special solutions to this problem. (V.A.C.S. Art. 5143d, Sec. 6 (part).)

**Sec. 61.032. Administration of Institutions**

The council shall administer the training, diagnostic treatment, and supervisory facilities and services of the state for delinquent children committed to the state and shall manage and direct all institutions and training school facilities under the authority of the council. (V.A.C.S. Art. 5143d, Secs. 4(f), 6 (part), and 19.)

**Sec. 61.033. Report to Governor, Legislature**

Before the convening date of each regular session of the legislature, the council shall make a report to the governor and the legislature of its activities and accomplishments and of its findings as to its major needs in fulfilling its responsibility for children committed to it by courts of the state. The report shall include specific recommendations for legislation, planned and drafted as part of a unified program to serve the best interest of the state and the youth committed to the council, and recommendations for the repeal of any conflicting, obsolete, or otherwise undesirable legislation affecting youth. (V.A.C.S. Art. 5143d, Sec. 6 (part).)

**Sec. 61.034. Policies and Rules**

(a) The council is responsible for the adoption of all policies and shall make rules appropriate to the proper accomplishment of its functions.

(b) The council shall adopt rules for the government of the schools and facilities under its authority and shall see that the affairs of the schools and facilities are conducted according to law and to the council's rules. The purpose of the rules and of all education, work, training, discipline, recreation, and other activities in the schools and facilities is to restore and increase the self-respect and self-reliance of the youth under the authority of the council and to qualify them for good citizenship and honorable employment. (V.A.C.S. Art. 5143d, Secs. 5(b) and 21.)

**Sec. 61.035. Employees**

(a) Within the limits specified by legislative appropriation, the council may employ and compensate personnel necessary to carry out its duties.

(b) The council may remove any employee for cause, and a decision by the council is final.

(c) A superintendent may remove for cause any employee under his or her authority, with the approval of the executive director. (V.A.C.S. Art. 5143d, Secs. 9 and 20 (part).)

**Sec. 61.036. Cooperation With Other Agencies**

(a) The council shall cooperate with all existing agencies and encourage the establishment of new agencies, both local and statewide, whose object is services to delinquent and predelinquent youth of this state.

(b) On the request of the governing body of any county or city, the council shall assist in developing, strengthening, and coordinating educational, welfare, health, recreational, and law-enforcement programs which have as their object the prevention of juvenile delinquency and crime. (V.A.C.S. Art. 5143d, Sec. 6 (part).)

**Sec. 61.037. Use of Existing Institutions and Agencies**

(a) In carrying out its duties, the council may make use of law-enforcement, detention, supervisory, medical, educational, correctional, and other facilities, institutions, and agencies in the state. This section does not authorize the council to assume control of any other agency, institution, or facility in the state, or to require any agency, institution, or facility to serve the council in a manner inconsistent with its authority or function or with any law or regulation governing its activity.

(b) When funds are available for the purpose, the council may enter into agreements with appropriate public or private agencies for the separate care and treatment of persons subject to the control of the council. The council may not make use of any private institution or agency without its consent and may not pay a private institution for services that a public institution is willing and able to perform.

(c) The council shall periodically inspect all public and private institutions and agencies whose facilities it is using. Every public and private institution and agency shall afford to the council reasonable opportunity to examine and consult with children who have been committed to the council and who are in the custody of the institution or agency.

(d) Placement of a child in, or the release of a child by, any institution not operated by the council does not terminate the authority of the council over the child. No child placed in an institution or under an agency by the council may be released by the institution or agency without the approval of the council. (V.A.C.S. Art. 5143d, Sec. 25.)

**Sec. 61.038. Local Programs**

(a) The council shall assist local communities when funds are available by providing services and funds for programs for predelinquent and delinquent children through contracts with local public or private non-profit entities.

(b) A local public or private nonprofit entity that provides or plans to provide a service or program for predelinquents or delinquents may request assistance authorized by this subchapter by applying to the council in compliance with council rules.

(c) A request for local assistance must be consistent with the council's statewide plans designed to meet the needs of the different geographical areas of the state.

(d) The council may require that state funds for local services be matched by local funds in amounts determined by the council.

(e) The council shall monitor and evaluate the fiscal management and effectiveness of a service or program funded under this subchapter.

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(f) The council shall suspend payment of a contract if the local entity fails to implement the approved program or diverts contract funds to an unauthorized use.

(g) The council shall adopt rules and standards for the contracts and programs authorized by this subchapter. (V.A.C.S. Art. 5143d, Sec. 6 (part).)

**Sec. 61.039. Council Programs**

The council may provide a service or program as part of its statewide plan if the service or program is not provided by a local community. (V.A.C.S. Art. 5143d, Sec. 6 (part).)

**Sec. 61.040. Additional Facilities; Parole Supervision**

When funds are available, the council may:

(1) establish and operate places for detention and diagnosis of delinquent children committed to it;

(2) establish and operate additional treatment and training facilities, including forestry or parks-maintenance camps and ranches necessary to classify, segregate, and handle juvenile delinquents according to their needs;

(3) establish active parole supervision to aid children given conditional release to find homes and employment and to become reestablished in the community. (V.A.C.S. Art. 5143d, Sec. 26.)

**Sec. 61.041. Study of Treatment Methods; Statistical Records**

(a) The council shall conduct continuing inquiry into the effectiveness of the treatment methods it employs in the reformation of delinquent children. To this end, the council shall maintain a record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction of the council and shall tabulate, analyze, and publish biennially these data for use in evaluating the relative merits of treatment methods.

(b) The council shall cooperate with courts and private and public agencies in the collection of statistics and information regarding juvenile delinquency, arrests made, complaints, informations, and petitions filed, and the dispositions made of them, and other information useful in determining the amount and causes of juvenile delinquency in this state. (V.A.C.S. Art. 5143d, Sec. 34.)

**Sec. 61.042. Referrals from Federal Court**

The council may enter into agreements with the federal government to accept children from the federal court for an agreed compensation. (V.A.C.S. Art. 5143d, Sec. 11.)

**Sec. 61.043. Gifts; Grants**

The council may accept gifts, grants, or donations of money or property from private sources to effectuate the purpose of this chapter. Donated funds shall be placed in the state treasury in a special fund called the Texas Youth Council fund and expended as other state money is expended, on warrants drawn by the comptroller on the order of the council. (V.A.C.S. Art. 5143d, Sec. 10.)

**Sec. 61.044. Duties of Executive Director**

(a) The executive director shall perform the duties assigned by the council.

(b) The executive director shall prepare and submit to the council for its approval a biennial budget of all funds necessary to be appropriated by the legislature to the council to carry out the purposes of this chapter. The budget shall be submitted and filed by the council in the form and

manner and within the time prescribed by law. (V.A.C.S. Art. 5143d, Secs. 4(g) (part) and 36.)

**Sec. 61.045. Duties of Superintendents**

(a) The superintendent of each school or facility shall have general charge of and be responsible for the welfare and custody of the children in the school or facility and for carrying out the rehabilitation program prescribed by the council. Under the direction of the council, the superintendent shall seek to establish relationships and to organize a way of life that will meet the spiritual, moral, physical, emotional, intellectual, and social needs of the children under his or her care as those needs would be met in an adequate home.

(b) The superintendent shall see that the buildings and premises are kept in good sanitary order.

(c) The superintendent is responsible for keeping the books of the school or facility fully exhibiting all money received and disbursed, the source from which it is received, and the purposes for which it is expended. All supplies for the school or facility shall be purchased in the same manner as for other similar institutions. The books shall give a full record of all products produced, whether sold or consumed, and shall at all times be open for the inspection of the council, the state auditor, and the governor. (V.A.C.S. Art. 5143d, Sec. 23.)

**Sec. 61.046. Religious Training**

The council shall provide for the religious and spiritual training of children in its custody. (V.A.C.S. Art. 5143d, Sec. 24.)

[Sections 61.047–61.060 reserved for expansion]

**SUBCHAPTER D. ADMISSION AND COMMITMENT**

**Sec. 61.061. Admission to State Homes**

(a) Subject to the policies adopted by the council, the Corsicana State Home, the West Texas Children's Home at Pyote, and the Waco State Home may accept for admission any child 3 years of age or older but under 19 years of age who is a full orphan, a half-orphan, or the subject of a suit affecting the parent-child relationship under Subtitle A, Title 2, of the Family Code, and may offer, if needed, care, treatment, education, and training to the child until his or her 18th birthday. A person who is 18 years old or older and who leaves the home provided by this section may not return to live there.

(b) A person under the care of a home named in this section who is 18 years old or older may remain at the home if the home determines that room is available and if he or she is a full-time or part-time student at an accredited academic or vocational institution.

(c) A person who remains at the home under the conditions described in Subsection (b) of this section may stay at the home until his or her 21st birthday or until he or she is no longer enrolled in school. (V.A.C.S. Art. 5143d, Sec. 9a.)

**Sec. 61.062. Commitment by Juvenile Court**

When a child is found to have engaged in delinquent conduct as provided by Title 3, Family Code, and a juvenile court does not release the child unconditionally or place the child on probation or in a suitable institution or agency other than a state training school, the juvenile court shall commit the child to the council and may suspend the execution of the order of commitment. (V.A.C.S. Art. 5143d, Sec. 12.)

**Sec. 61.063. Order Conveying Child**

When a juvenile court commits a child to the council, the court may order the child conveyed to some place of detention approved, established, or designated by the council, or it may direct that the child be left at liberty until otherwise ordered by the council under conditions ensuring the child's submission to any order of the council. (V.A.C.S. Art. 5143d, Sec. 13(a).)

**Sec. 61.064. Conveyance of Child to Council**

(a) When a child is to be conveyed to a facility designated by the council, the juvenile court shall assign an officer or other suitable person to accompany the child. The person assigned to accompany a female must be a woman.

(b) The cost of conveying the child shall be paid by the county from which the child is committed. However, no compensation shall be allowed except for the actual and necessary expenses of the child and the person accompanying the child. (V.A.C.S. Art. 5143d, Sec. 13(b).)

**Sec. 61.065. Notification and Duty to Furnish Information**

(a) When a juvenile court commits a child to the council, the court shall forward to the council a certified copy of the order of commitment.

(b) The court, the probation officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the council all pertinent information in their possession regarding the case.

(c) If requested by the council, the reports required by this section shall be made on forms furnished by the council or according to an outline furnished by the council. (V.A.C.S. Art. 5143d, Sec. 15.)

**Sec. 61.066. Commitment Records**

A commitment to the council may not be received in evidence or used in any way in any proceedings in any court except in subsequent proceedings under Title 3, of the Family Code against the same child, and except in imposing sentence in any criminal proceedings against the same person. (V.A.C.S. Art. 5143d, Sec. 33.)

[Sections 61.067–61.070 reserved for expansion]

**SUBCHAPTER E. CARE AND TREATMENT OF CHILDREN**

**Sec. 61.071. Initial Examination**

The council shall examine and make a study of each delinquent child committed to it as soon as possible after the arrival of the child. The study shall be made according to rules established by the council and shall include an investigation of all pertinent circumstances of the life and behavior of the child. (V.A.C.S. Art. 5143d, Sec. 16(a).)

**Sec. 61.072. Reexamination**

The Council shall periodically reexamine each child under its control except those on release under supervision or in foster homes. The examination of a child may be made as frequently as the council considers desirable, but shall be made at intervals not exceeding one year. (V.A.C.S. Art. 5143d, Sec. 16(b).)

**Sec. 61.073. Records of Examinations and Treatment**

The council shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each delinquent child subject to its control. These records are not public and are available only on the order of a district court. (V.A.C.S. Art. 5143d, Sec. 16(c).)



**Sec. 61.074. Failure to Examine or Reexamine**

Failure of the council to examine or reexamine a child as required by this chapter does not entitle the child to be discharged from the control of the council, but the child may petition the committing court for discharge. After due notice to the council, the committing court shall discharge the child from the control of the council unless the council satisfies the court that further control is necessary. (V.A.C.S. Art. 5143d, Sec. 16(d).)

**Sec. 61.075. Determination of Treatment**

When a delinquent child has been committed to the council, the council may:

- (1) permit the child liberty under supervision and on conditions it believes conducive to acceptable behavior;
- (2) order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public;
- (3) order reconfinement or renewed release as often as conditions indicate to be desirable;
- (4) revoke or modify any order of the council affecting a child, except an order of final discharge, as often as conditions indicate; or
- (5) discharge the child from control when it is satisfied that discharge will best serve the child's welfare and the protection of the public. (V.A.C.S. Art. 5143d, Sec. 17.)

**Sec. 61.076. Type of Treatment Permitted**

(a) As a means of correcting the socially harmful tendencies of a delinquent child committed to it, the council may:

- (1) require the child to participate in moral, academic, vocational, physical, and correctional training and activities;
- (2) require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public;
- (3) provide any medical or psychiatric treatment that is necessary; and
- (4) place physically fit children in parks-maintenance camps, forestry camps, or ranches owned by the state or the United States and require the performance of suitable conservation and maintenance work.

(b) The dominant purpose of placing children in camps is to benefit and rehabilitate the children rather than to make the camps self-sustaining. Children placed in camps may not be exploited. (V.A.C.S. Art. 5143d, Sec. 18.)

**Sec. 61.077. Mentally Ill, Retarded, or Epileptic Child**

If the council determines that a delinquent child committed to it is mentally ill or retarded or is an epileptic, the council, without delay, shall return the child to the court of original jurisdiction for appropriate disposition or shall request that the court in the county where the training school is located take any action required by the condition of the child. (V.A.C.S. Art. 5143d, Sec. 30.)

[Sections 61.078-61.080 reserved for expansion]

**SUBCHAPTER F. RELEASE.**

**Sec. 61.081. Release Under Supervision**

(a) The council may release under supervision any delinquent child in its custody and place the child in his or her home or in any situation or family approved by the council.

(b) Subject to legislative appropriation, the council may employ parole officers to investigate, place, supervise, and direct the activities of a parolee to ensure the parolee's adjustment to society in accordance with the rules adopted by the council.

(c) Parole officers may work with local organizations, clubs, and agencies to formulate plans and procedures for the prevention of juvenile delinquency.

(d) The council may resume the care and custody of any child released under supervision at any time before the final discharge of the child. (V.A.C.S. Art. 5143d, Sec. 27.)

**Sec. 61.082. Transportation, Clothing, Money**

(a) The council shall ensure that each delinquent child it releases under supervision has suitable clothing, transportation to his or her home or to the county in which a suitable home or employment has been found, and money in an amount authorized by the rules of the council.

(b) The expenditure for clothing and transportation and the payment of money may be made from funds for support and maintenance appropriated to the council or to the institution from which the child is released, from local funds, or from any legislative appropriation specifically made for these purposes. (V.A.C.S. Art. 5143d, Sec. 28.)

**Sec. 61.083. Contracts With Counties**

(a) The council may make a contract with a county to use the services of the county's juvenile probation department for the supervision of delinquent children within the county who are on furlough from a council facility or who are released under supervision from a council facility.

(b) The council shall pay the county \$1 a day for each child subject to a contract authorized by Subsection (a) of this section. However, the maximum payment for each child in the county for more than 20 days is \$20 a month. The payments shall be made to the county treasurer on a quarterly schedule.

(c) The council may not pay a county for supervision of a child for any time after the child:

- (1) is discharged from the council's custody;
- (2) is returned to a council facility; or
- (3) transfers his or her residence to another county or state

(d) A county that has a contract with the council must report to the council on the status and progress of each child for whom the county is receiving payments. The reports shall be made at the time and in the manner specified by the contract. (V.A.C.S. Art. 5143d, Sec. 25A.)

**Sec. 61.084. Termination of Control**

The council shall discharge from its custody a child not already discharged on his or her 18th birthday. (V.A.C.S. Art. 5143d, Sec. 31.)

[Sections 61.085–61.090 reserved for expansion]

**SUBCHAPTER G. MISCELLANEOUS PROVISIONS****Sec. 61.091. Cooperation of Other Agencies**

To effectuate the purpose of this chapter and to make maximum use of existing facilities and personnel, all departments and agencies of the state and all officers and employees of the state, when requested by the council, shall cooperate with it in all activities consistent with their proper functions. (V.A.C.S. Art. 5143d, Sec. 7.)

**Sec. 61.092. No Forfeiture of Civil Rights**

Commitment of a delinquent child to the custody of the council does not disqualify the child in any future examination, appointment, or application for public service under the government of the state or of any political subdivision of the state. (V.A.C.S. Art. 5143d, Sec. 32.)

**Sec. 61.093. Escape and Apprehension**

A delinquent child who has been committed to the council and placed by it in any institution or facility and who has escaped or been released under supervision and broken the conditions of release, may be arrested without a warrant by a sheriff, deputy sheriff, constable, police officer, or parole officer employed or designated by the council, and may be kept in custody in a suitable place and detained until the child is returned to the custody of the council. (V.A.C.S. Art. 5143d, Sec. 29.)

**CHAPTER 62. DETENTION HOMES AND PARENTAL SCHOOLS****Section**

62.001. Detention Homes and Parental Schools.

62.002. Multicounty Facilities.

**Sec. 62.001. Detention Homes and Parental Schools**

(a) Any county may establish detention homes and parental schools for juveniles. The commissioners court may appropriate necessary funds from the general fund of the county to establish, equip, and maintain detention homes and parental schools for the juveniles of the county.

(b) Any county in which no detention home or parental school exists may appropriate funds necessary to pay for the proper care and training of its juveniles in the detention home or parental school of any county that agrees to receive the juveniles. The cost of the care shall be agreed on by the commissioners courts of the counties concerned.

(c) If, in the opinion of the commissioners court, it is necessary to levy a special tax to establish and maintain a detention home or parental school or to pay for the care and training of juveniles as provided by Subsection (b) of this section, the commissioners court may hold a special election on the question of levying the tax. If a petition signed by 10 percent of the qualified voters of the county is submitted requesting a special election, the commissioners court shall hold the special election.

(d) All elections held under Subsection (c) of this section shall be governed by the general laws relating to elections for the levy of special school taxes. (R.S. Art. 5138.)

**Sec. 62.002. Multicounty Facilities**

(a) The purpose of this section is to enable counties jointly to provide better probation services and detention and diagnostic facilities for juveniles than the counties, acting singly, would be able to provide.

(b) The commissioners courts of two or more counties may enter into cooperative agreements to acquire, maintain, and operate detention and

diagnostic facilities for juveniles. The counties may maintain, improve, and operate the property so acquired and all improvements thereon, and may sell or lease all or any part of the property and improvements in accordance with the terms of the cooperative agreement. The counties may accept any donation or gift made for the purpose of acquiring, maintaining, or operating the juvenile facilities.

(c) In accordance with the terms of the cooperative agreement, each county which is a party to the agreement may issue the bonds of the county as provided by Chapter 2, Title 22, Revised Civil Statutes of Texas, 1925, as amended, for the purpose of acquiring, maintaining, and operating the facilities for juveniles.

(d) The commissioners courts of two or more counties may enter into cooperative agreements to provide probation services for juveniles. The cooperative agreement shall set forth in detail how the probation services are to be provided and financed. (V.A.C.S. Art. 5143f.)

## **SUBTITLE B. SERVICES FOR CHILDREN**

### **CHAPTER 71. COMMISSION ON SERVICES TO CHILDREN AND YOUTH**

#### **Section**

- 71.001. Commission on Services to Children and Youth.**
- 71.002. Application of Sunset Act.**
- 71.003. Officers; Meetings.**
- 71.004. Expenses.**
- 71.005. Commission Staff; Budget.**
- 71.006. Duties of the Commission.**
- 71.007. Gifts and Grants.**
- 71.008. Annual Report.**
- 71.009. Cooperation of Other Agencies.**

#### **Sec. 71.001. Commission on Services to Children and Youth**

(a) The Texas Commission on Services to Children and Youth is composed of:

- (1) the commissioner of health;
- (2) the commissioner of education;
- (3) the presiding officer of the Coordinating Board, Texas College and University System;
- (4) the commissioner of human resources;
- (5) the commissioner of mental health and mental retardation;
- (6) the director of the Texas Department of Corrections;
- (7) the director of the Texas Department of Public Safety;
- (8) the executive director of the State Commission for the Blind;
- (9) the executive director of the Texas Youth Council;
- (10) the director of the Texas Employment Commission;
- (11) the director of the Texas Rehabilitation Commission; and
- (12) 18 lay members.

(b) Lay members of the commission are appointed by the governor with the advice and consent of the senate for staggered terms of six years, with the terms of six members expiring on January 31 of each odd-numbered year. Lay members must be representative of the racial, ethnic, and economic makeup of the population of Texas, and six members must be younger than 21 years of age at the time of appointment. (V.A.C.S. Art. 4413(43), Secs. 1 and 2.)

**Sec. 71.002. Application of Sunset Act**

The commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished and this chapter expires effective September 1, 1985. (V.A.C.S. Art. 4413(43), Sec. 1a.)

**Sec. 71.003. Officers; Meetings**

(a) The commission shall elect a presiding officer and other necessary officers from its membership.

(b) The commission shall hold periodic meetings at a place designated by the commission. (V.A.C.S. Art. 4413(43), Sec. 3.)

**Sec. 71.004. Expenses**

Commission members are entitled to receive reimbursement for their actual travel and other necessary expenses incurred in the performance of their duties. (V.A.C.S. Art. 4413(43), Sec. 5.)

**Sec. 71.005. Commission Staff; Budget**

(a) The commission may use staff available to it from the Texas Department of Community Affairs.

(b) For budgetary purposes the commission is attached to and considered a part of the Texas Department of Community Affairs, with necessary operating expenses financed by legislative appropriations. (V.A.C.S. Art. 4413(43), Secs. 6 and 7.)

**Sec. 71.006. Duties of the Commission**

(a) The commission shall assist in coordinating the administrative responsibilities and services of state agencies and programs concerned with the well-being of children and youth.

(b) The commission shall continuously study matters relevant to the protection, growth, and development of children and youth and shall periodically indicate on a priority basis necessary changes to the legislature.

(c) The commission may undertake other activities which it feels will encourage other public and private bodies throughout the state to engage in programs for the development of children and youth.

(d) The commission shall perform any duties assigned to it by the governor or the legislature concerning White House Conferences on Children and Youth. (V.A.C.S. Art. 4413(43), Sec. 4.)

**Sec. 71.007. Gifts and Grants**

The commission may accept gifts and grants of money from any individual, group, association, corporation, or the federal government and may expend the funds in accordance with the purposes and under the conditions specified by the donor. (V.A.C.S. Art. 4413(43), Sec. 8.)

**Sec. 71.008. Annual Report**

On or before December 1 of each year, the commission shall make a detailed written report of its activities to the governor and to the presiding officer of each house of the legislature. (V.A.C.S. Art. 4413(43), Sec. 9.)

**Sec. 71.009. Cooperation of Other Agencies**

All state agencies, officers, and employees shall cooperate with the commission to the extent consistent with their functions. (V.A.C.S. Art. 4413(43), Sec. 10.)

**TITLE 4. SERVICES FOR THE DEAF**  
**CHAPTER 81. STATE COMMISSION FOR THE DEAF**

**Section**

- 81.001. Definition.
- 81.002. State Commission for the Deaf.
- 81.003. Application of Sunset Act.
- 81.004. Terms of Office.
- 81.005. Presiding Officer.
- 81.006. Meetings; Quorum; Expenses.
- 81.007. Executive Director; Staff.
- 81.008. Powers and Duties of Commission.

**Sec. 81.001. Definition**

In this chapter, "commission" means the State Commission for the Deaf. (V.A.C.S. Art. 4413(42), Sec. 1.)

**Sec. 81.002. State Commission for the Deaf**

(a) The State Commission for the Deaf is composed of six members appointed by the governor with the advice and consent of the senate.

(b) Two members must be deaf and all members must be outstanding citizens of the state. (V.A.C.S. Art. 4413(42), Secs. 2(a) and (b).)

**Sec. 81.003. Application of Sunset Act**

The State Commission for the Deaf is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished and this chapter expires effective September 1, 1985. (V.A.C.S. Art. 4413(42), Sec. 2(c).)

**Sec. 81.004. Terms of Office**

Commission members hold office for staggered terms of six years, with the terms of two members expiring on January 31 of each odd-numbered year. (V.A.C.S. Art. 4413(42), Sec. 3.)

**Sec. 81.005. Presiding Officer**

The commission shall elect a presiding officer from its membership who shall serve for a period of one year or until his successor is elected. (V.A.C.S. Art. 4413(42), Sec. 4.)

**Sec. 81.006. Meetings; Quorum; Expenses**

(a) The commission shall hold at least six meetings each year and shall make rules providing for the holding of special meetings.

(b) Four members constitute a quorum for the transaction of business.

(c) Members are entitled to reimbursement for their actual expenses incurred in attending meetings of the commission and in carrying out their official duties. (V.A.C.S. Art. 4413(42), Sec. 5.)

**Sec. 81.007. Executive Director; Staff**

(a) The commission shall appoint a qualified person to serve as executive director. In selecting an executive director the commission shall give preference to a person who is deaf or hard-of-hearing.

(b) The commission may employ a secretary and other employees it considers necessary to carry out the purposes of this chapter. (V.A.C.S. Art. 4413(42), Secs. 6 and 7.)

**Sec. 81.008. Powers and Duties of Commission**

(a) The commission is the state agency responsible for rendering all services to the deaf except those services which are by law the responsibility of other agencies of the state.

(b) The commission shall conduct a census of deaf persons in Texas and compile a current registry.

(c) The commission shall serve as an agency for the collection of information concerning the deaf and related matters and the dispensing of this information to interested persons.

(d) The commission may accept gifts, grants, and donations of money and property for use in expanding and improving services to deaf persons in the state. (V.A.C.S. Art. 4413(42), Sec. 8.)

## **TITLE 5. SERVICES FOR THE BLIND AND VISUALLY HANDICAPPED**

### **CHAPTER 91. STATE COMMISSION FOR THE BLIND**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

**Section**

91.001. Application of Sunset Act.

91.002. Definitions.

[Sections 91.003–91.010 reserved for expansion]

#### **SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

91.011. State Commission for the Blind.

91.012. Executive Director; Other Personnel.

91.013. Expenses; Accounts.

[Sections 91.014–91.020 reserved for expansion]

#### **SUBCHAPTER C. GENERAL POWERS AND DUTIES OF THE COMMISSION**

91.021. Responsibility for Visually Handicapped Persons.

91.022. Bureau of Information.

91.023. Rehabilitation Services.

91.024. Workshops and Salesrooms.

91.025. Instruction of Blind Persons in Their Homes.

91.026. Registry of Blind and Visually Handicapped Persons.

91.027. Prevention of Blindness and Conservation of Eyesight.

91.028. Services for Visually Handicapped Children.

91.029. Vocational Guidance and Related Services.

91.030. Gifts and Grants.

91.031. Reports.

[Sections 91.032–91.050 reserved for expansion]

#### **SUBCHAPTER D. VOCATIONAL REHABILITATION OF THE BLIND**

91.051. Definitions.

91.052. Vocational Rehabilitation Program for the Blind.

91.053. Cooperation With Federal Government.

91.054. Director; Appointment and Duties.

91.055. Eligibility for Vocational Rehabilitation Services.

91.056. Receipt and Disbursement of Funds.

91.057. Gifts.

91.058. Hearings.

91.059. Misuse of Information.

91.060. Limitation on Political Activity.

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 91.001. Application of Sunset Act**

The State Commission for the Blind is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished and this chapter expires effective September 1, 1985. (V.A.C.S. Art. 3207a, Sec. 1a.)

**Sec. 91.002. Definitions**

In this chapter:

- (1) "Commission" means the State Commission for the Blind.
- (2) "Blind" means a person having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.
- (3) "Visual handicap" includes blindness, an eye condition for which there is a medical prognosis indicating that the condition is of a progressive nature and may deteriorate either to blindness or to a substantial loss of vision, and physical or psychological handicaps that accompany or complement a disorder or imperfection of the eye.
- (4) "Visually handicapped child" means a child with a visual handicap or with a visual condition requiring cosmetic treatment, psychological assistance, counseling, or other assistance that the commission can render. (V.A.C.S. Art. 3207a, Sec. 2(j).)

[Sections 91.003–91.010 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**Sec. 91.011. State Commission for the Blind**

(a) The State Commission for the Blind is composed of six members appointed by the governor with the consent of the senate. Two members must be reputable blind citizens of the state and the remaining members must be outstanding citizens of the state.

(b) A person is ineligible for appointment to the commission if the person is a paid employee of an agency carrying on work for the blind or if the person is engaged in or associated with or otherwise represents a business, discipline, profession, or trade conducted for the primary purpose of selling or furnishing goods or services of the type provided by the commission as a significant part of its assistance to eligible individuals.

(c) Members of the commission hold office for terms of six years with the terms of two members expiring on January 1 of odd-numbered years.

(d) Commission members serve without compensation but are entitled to reimbursement for necessary expenses incurred in the performance of their duties.

(e) The commission shall elect a presiding officer from its membership annually.

(f) Four members of the commission constitute a quorum for the transaction of business. (V.A.C.S. Art. 3207a, Sec. 1; Art. 3207b (part).)

**Sec. 91.012. Executive Director; Other Personnel**

(a) The commission shall annually appoint an executive director and other necessary employees authorized by law.



(b) On undertaking specific activities supporting special and vocational education programs for the blind and visually handicapped, the commission may appoint an assistant executive director, a deputy director for cooperative programs with other agencies and departments of the state or its political subdivisions, a deputy director for technical and consultative services to private organizations and special resource facilities within the field, and a deputy director for the regular programs of the agency. These positions and the position of executive director are exempt from the state salary classification schedule, and, within the limits of available funds, the commission may fix the salaries for the positions at amounts not exceeding the average amounts paid for equivalent positions in any other five state agencies engaged in the direct extension of state-supported services to eligible individuals. The salaries and related costs of these positions may be paid out of the general funds of the agency, the special grants received by the agency, or other funds available to the agency under interagency agreements.

(c) Within the limits of appropriated funds the commission may employ other personnel necessary to carry out its duties. (V.A.C.S. Art. 3207a, Sec. 3; Art. 3207b (part).)

**Sec. 91.013. Expenses; Accounts**

(a) Expenses of commission members and employees must be paid in the most efficient and practical manner authorized by law.

(b) All accounts must be paid in accordance with laws applicable to the commission or to state agencies generally. (V.A.C.S. Art. 3207b (part).)

[Sections 91.014–91.020 reserved for expansion]

**SUBCHAPTER C. GENERAL POWERS AND DUTIES OF THE COMMISSION**

**Sec. 91.021. Responsibility for Visually Handicapped Persons**

(a) The commission has primary responsibility for providing all services to visually handicapped persons except welfare services and services for children provided by regularly established educational agencies and state authorities.

(b) The commission shall negotiate interagency agreements with other state agencies to provide services for individuals who have both a visual handicap and another handicapping condition so that those multiply handicapped individuals may be provided the most beneficial services with the greatest possible economy.

(c) The commission and other concerned state agencies may not refuse to enter an interagency agreement developed to advance the state's policies regarding the rehabilitation or education of the blind and visually handicapped. In negotiating the agreements the agencies shall seek to extend and improve the regular services provided by the agencies and to effectively use all speciality and fiscal resources that are available. The agencies shall give careful consideration to avoiding unnecessary duplication or overlap of their respective efforts.

(d) The commission shall enter into agreements with the federal government to implement federal legislation authorizing the provision of services to the visually handicapped. The commission shall adopt methods of administration required by the federal government for the proper and efficient implementation of the agreements, and shall comply with other federal requirements necessary to secure the full benefits of the federal legislation.

(e) The commission and other concerned state agencies may not refuse to enter interagency agreements designed to secure the full benefits of federal legislation authorizing services for the visually handicapped. (V.A.C.S. Art. 3207a, Sec. 2a.)

**Sec. 91.022. Bureau of Information**

The commission shall maintain a bureau of information to assist blind and visually handicapped persons in finding employment. (V.A.C.S. Art. 3207a, Sec. 2(a).)

**Sec. 91.023. Rehabilitation Services**

The commission may furnish materials, tools, books, and other necessary apparatus and assistance for use in rehabilitating blind and visually handicapped persons. (V.A.C.S. Art. 3207a, Sec. 2(b).)

**Sec. 91.024. Workshops and Salesrooms**

The commission may establish workshops and salesrooms for blind and visually handicapped persons. The commission may use receipts or earnings that accrue from the operation of industrial schools, salesrooms, or workshops authorized in this chapter. Detailed statements of the receipts or earnings and expenditures shall be made to the state auditor monthly. (V.A.C.S. Art. 3207a, Sec. 2(c).)

**Sec. 91.025. Instruction of Blind Persons in Their Homes**

The commission may employ teachers to instruct adult blind persons in their homes. However, the commission may not undertake the permanent support or maintenance of a blind person. (V.A.C.S. Art. 3207a, Sec. 2(d).)

**Sec. 91.026. Registry of Blind and Visually Handicapped Persons**

The commission shall cooperate with the Governor's Coordinating Office for the Visually Handicapped in maintaining a current and comprehensive registry of blind and visually handicapped persons in the state. The registry must include appropriate information regarding individuals whose medical history or medical prognosis indicates that there is a reasonable likelihood that the individuals may experience a substantial visual handicap in the future. (V.A.C.S. Art. 3207a, Sec. 2(e).)

**Sec. 91.027. Prevention of Blindness and Conservation of Eyesight**

The commission shall take measures it considers advisable to prevent blindness and to conserve eyesight. (V.A.C.S. Art. 3207a, Sec. 2(f).)

**Sec. 91.028. Services for Visually Handicapped Children**

The commission may provide services to visually handicapped children to supplement the services provided by other state agencies if the commission determines that the provision of the services is appropriate and that the services will assist the children in achieving financial self-sufficiency and a fuller and richer life. It is the intention of the legislature that all state agencies concerned with visually handicapped children cooperate fully to achieve this purpose. (V.A.C.S. Art. 3207a, Sec. 2(g).)

**Sec. 91.029. Vocational Guidance and Related Services**

The commission may provide vocational guidance and related services to adults with seriously defective sight through its vocational rehabilitation division if the commission determines that it may appropriately and adequately do so. (V.A.C.S. Art. 3207a, Sec. 2(h).)

**Sec. 91.030. Gifts and Grants**

The commission may accept gifts and grants from individuals, associations, and corporations and may expend funds received in accordance with the provisions of this chapter. (V.A.C.S. Art. 3207a, Sec. 2(i).)

**Sec. 91.031. Reports**

The commission shall submit a report to the legislature before January 1 of each odd-numbered year detailing the commission's activities and accomplishments during the preceding biennium and accounting for all funds it received or spent. The report must include recommendations for further improvement of the conditions of the blind in the state. (V.A.C. S. Art. 3207a, Sec. 4.)

[Sections 91.032–91.050 reserved for expansion]

**SUBCHAPTER D. VOCATIONAL REHABILITATION OF THE BLIND****Sec. 91.051. Definitions**

In this subchapter:

(1) "Program" means the vocational rehabilitation program authorized in this subchapter.

(2) "Director" means the executive director of the commission or his or her designee who may devote full time to the program or to vocational rehabilitation and other closely related activities to the extent permitted by applicable federal rules.

(3) "Employment handicap" means a physical or mental condition that obstructs or impairs, or if not corrected will probably obstruct or impair, an individual's performance in an occupation.

(4) "Disabled individual" means a person who has a substantial employment handicap.

(5) "Blind disabled individual" means a person who is blind or who has a visual condition for which medical prognosis indicates a progressive deterioration that may result in a substantial vocational handicap.

(6) "Vocational rehabilitation" or "vocational rehabilitation services" means services that are provided directly by the commission or through a public or private agency and that the director determines are necessary to compensate a blind disabled individual for an employment handicap so that the individual may engage in a remunerative occupation. The terms include, but are not limited to, medical and vocational diagnosis; vocational guidance, counseling, and placement; rehabilitation training; physical restoration; transportation; occupational licenses; customary occupational tools and equipment; maintenance; training books and materials; and other goods and services for which the commission receives financial support under federal law.

(7) "Rehabilitation training" means all necessary training provided to a blind disabled individual to compensate for an employment handicap. The term includes, but is not limited to, manual, preconditioning, prevocational, vocational, and supplementary training and training to achieve broader and more lucrative skills and capacities.

(8) "Physical restoration" means medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a blind disabled individual's employment handicap within a reasonable period of time. The term includes, but is not limited to, medical, surgical, dental, and psychiatric treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances. The term excludes treatment to cure acute or transitory conditions.

(9) "Prosthetic appliance" means an artificial device necessary to support or replace a part of the body or to increase the acuity of a sensory organ.

(10) "Occupational license" means a license, permit, or other written authorization required by a governmental unit as a condition for engaging in an occupation.

(11) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation.

(12) "Rule" means a rule promulgated by the director and approved by the commission. (V.A.C.S. Art. 3207c, Sec. 1.)

**Sec. 91.052. Vocational Rehabilitation Program for the Blind**

(a) The commission shall conduct a program to provide vocational rehabilitation services to eligible blind disabled individuals.

(b) To achieve the purposes of the program, the commission may:

(1) cooperate with other public and private agencies in studying the problems involved in providing vocational rehabilitation and in establishing, developing, and providing necessary or desirable facilities and services;

(2) enter reciprocal agreements with other states to provide vocational rehabilitation for the residents of the states concerned; and

(3) conduct research and compile statistics relating to the vocational rehabilitation of blind disabled individuals. (V.A.C.S. Art. 3207c, Secs. 2 and 4.)

**Sec. 91.053. Cooperation With Federal Government**

(a) The commission shall cooperate with the federal government to accomplish the purposes of federal laws relating to vocational rehabilitation and closely related activities.

(b) The commission shall negotiate agreements or plans with the federal government and shall adopt efficient methods of administration and comply with other conditions required to secure the full benefits of the federal laws. If the commission determines that a provision of state law precludes conformity with a federal requirement and limits federal financial support, the commission may waive or modify the state law to the extent necessary to obtain the full benefits of the federal law.

(c) In adopting the methods of administration, the commission shall include a system of necessary staffing patterns, personnel administration, and employee compensation comparable to the systems used by state agencies that receive substantial federal financial support. However, the commission may not employ personnel or adopt a system of merit pay that is not authorized in the commission's state appropriation unless the commission certifies to the state auditor that the commission's action is necessary to accomplish its statutory purposes and that the action will not be financed with state funds. The commission shall submit financial information required by the state auditor to support the certification. (V.A.C.S. Art. 3207c, Sec. 5, as amended by Sections 6 and 8, Chapter 321, Acts of the 62nd Legislature, Regular Session, 1971.)

**Sec. 91.054. Director; Appointment and Duties**

(a) The commission shall appoint a director to administer the program under its general supervision.

(b) The commission shall select the director on the basis of his or her education, training, experience, and demonstrated abilities in accordance with established personnel standards.

(c) The director shall promulgate rules governing personnel standards and, with the commission's approval, shall appoint personnel necessary to efficiently accomplish the purposes of the program.

(d) With the commission's approval, the director may delegate to an employee of the program any of the director's powers and duties relating to the program except the power to make rules and appoint personnel.

(e) The director shall make rules governing standards of eligibility for vocational rehabilitation services, the form and manner of filing applications for those services, the procedures for investigating applicants and determining their eligibility, the procedures protecting records and confidential information, procedures for fair hearings, and other matters necessary to achieve the purposes of this subchapter.

(f) With the commission's approval, the director shall establish appropriate administrative units within the program.

(g) The director shall prepare and submit to the commission annual reports of program activities and expenditures, and prior to each regular session of the legislature shall estimate the amount of funds necessary to administer the program and the amount available from all sources for that purpose.

(h) With the commission's approval, the director shall take other actions he or she considers necessary or appropriate to carry out the purposes of this subchapter. (V.A.C.S. Art. 3207c, Sec. 3 (part).)

**Sec. 91.055. Eligibility for Vocational Rehabilitation Services**

(a) The commission shall provide vocational rehabilitation services to a blind disabled individual if the individual:

(1) resides in this state and the director determines after investigation that the individual's vocational rehabilitation can be satisfactorily achieved; or

(2) is eligible for the services under an agreement with another state or the federal government.

(b) Except as otherwise provided by law or an agreement with the federal government, the commission may provide the following vocational rehabilitation services at public expense only to disabled blind individuals who are found to require financial assistance:

(1) physical restoration;

(2) occupational licenses;

(3) customary occupational tools and equipment;

(4) training books and materials;

(5) maintenance; and

(6) transportation other than that provided to determine the individual's eligibility and the nature and extent of the vocational rehabilitation services necessary.

(c) A disabled blind individual's right to maintenance is not transferable or assignable at law or in equity. (V.A.C.S. Art. 3207c, Secs. 8 and 9.)

**Sec. 91.056. Receipt and Disbursement of Funds**

(a) The state treasurer is custodian of federal funds received by the state to implement federal law relating to vocational rehabilitation.

(b) The director shall certify for disbursement funds available for the vocational rehabilitation program in accordance with regulations.

(c) The treasurer shall disburse state and federal vocational rehabilitation funds on certification by the director. (V.A.C.S. Art. 3207c, Secs. 3 (part) and 6.)

**Sec. 91.057. Gifts**

(a) With the approval of the commission, the director may accept and use unconditional gifts made to the commission to carry out the purposes of this subchapter.

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(b) The director may accept, use, hold, or invest conditional gifts if the commission determines that the conditions are consistent with the provisions of this subchapter. (V.A.C.S. Art. 3207c, Sec. 7.)

**Sec. 91.058. Hearings**

An applicant for or recipient of vocational rehabilitation services who is aggrieved by an action or inaction under the program is entitled to a hearing by the commission in accordance with law. (V.A.C.S. Art. 3207c, Sec. 10.)

**Sec. 91.059. Misuse of Information**

Except for purposes directly connected with the administration of the vocational rehabilitation program, no person may solicit, disclose, receive, use, or knowingly permit the use of records or other information concerning an applicant for or recipient of vocational rehabilitation services that is directly or indirectly acquired by an officer or employee of the state or its political subdivisions in the course of his or her official duties. (V.A.C.S. Art. 3207c, Sec. 11.)

**Sec. 91.060. Limitation on Political Activity**

(a) No officer or employee engaged in the administration of the vocational rehabilitation program may:

(1) use his or her official authority or influence or permit the use of the program for a partisan political purpose or for the purpose of interfering with or affecting the results of an election;

(2) take an active part in the management of a political campaign or participate in a political activity; or

(3) solicit or receive any service, assistance, subscription, assessment, or contribution for a political purpose.

(b) An officer or employee engaged in the administration of the program may vote as he pleases, may express his opinions as a citizen on any subject, and may not be required to contribute or render any service, assistance, subscription, assessment, or contribution for any political purpose.

(c) An officer or employee who violates Subsection (a) of this section is subject to discharge or suspension. (V.A.C.S. Art. 3207c, Sec. 12.)

**CHAPTER 92. GOVERNOR'S COORDINATING OFFICE FOR  
THE VISUALLY HANDICAPPED**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Section**

**92.001. Purpose.**

**92.002. Definitions.**

[Sections 92.003–92.010 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**92.011. Governor's Coordinating Office for the Visually Handicapped.**

**92.012. Technical Advisory Council for Planning and Operations.**

**92.013. Policy Board for Services to the Visually Handicapped.**

[Sections 92.014–92.020 reserved for expansion]

**SUBCHAPTER C. POWERS AND DUTIES OF THE OFFICE**

**Section**

- 92.021. General Functions of the Office.
- 92.022. Limitation on Service Activities.
- 92.023. Interagency Contracts.

[Sections 92.024–92.050 reserved for expansion]

**SUBCHAPTER D. CENTRAL MEDIA DEPOSITORY**

- 92.051. Purpose.
- 92.052. Establishment of Central Media Depository.
- 92.053. Ancillary Services.
- 92.054. Funding.

[Sections 92.055–92.080 reserved for expansion]

**SUBCHAPTER E. REGISTER OF BLIND AND VISUALLY HANDICAPPED PERSONS**

- 92.081. Maintenance of Register.
- 92.082. Reports.
- 92.083. Registration.
- 92.084. Systems, Standards, and Procedures.
- 92.085. Data Processing.

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 92.001. Purpose**

The purpose of this chapter is to ensure effective coordination and co-operation among all public and private nonprofit organizations that provide services pertinent to the special needs of visually handicapped individuals. (R.S. Art. 4413(202), Sec. 1.)

**Sec. 92.002. Definitions**

In this chapter:

- (1) "Visually handicapped" means the blind, the deaf-blind, and persons with a visual impairment that requires the provision of special services.
- (2) "Office" means the Governor's Coordinating Office for the Visually Handicapped.
- (3) "Policy board" means the Policy Board for Services to the Visually Handicapped.
- (4) "Advisory council" means the Technical Advisory Council for Planning and Operations. (R.S. Art. 4413(202), Sec. 2; New.)

[Sections 92.003–92.010 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**Sec. 92.011. Governor's Coordinating Office for the Visually Handicapped**

(a) The Governor's Coordinating Office for the Visually Handicapped is established.

(b) After receiving recommendations from the policy board and the advisory council, the governor shall appoint an administrator and other staff for the office. The administrator and staff serve at the governor's pleasure.

(c) State agencies that provide services to the visually handicapped may lend or detail employees to the office. The administrator may enter into contracts with the state agencies for reimbursement of costs incidental to the lending or detailing of the employees. (R.S. Art. 4413(202), Sec. 3.)

**Sec. 92.012. Technical Advisory Council for Planning and Operations**

(a) The Technical Advisory Council for Planning and Operations is established.

(b) The chief executive officers, or their designees, of the Central Education Agency, the Texas Department of Mental Health and Mental Retardation, the State Commission for the Blind, and the Texas School for the Blind serve as ex officio members of the council. In addition, the administrator shall appoint a member of the faculty of a college or university which specializes in the area of training for the blind and two representatives of nonprofit organizations which provide services for the visually handicapped to serve on the council.

(c) Lay members of the council serve for terms of two years, receive no compensation, and are entitled to reimbursement for actual and necessary expenses incurred in performing their duties.

(d) The administrator may appoint representatives of other public or private agencies to serve as advisors to the council and may authorize the reimbursement of their actual and necessary expenses incurred in serving the council.

(e) The council shall serve as an interagency planning council for the coordination of services to the visually handicapped. The council shall assist the administrator in clarifying the statutory responsibility and expectations of each agency and in determining which agency is primarily responsible for serving a multiply handicapped blind individual. (R.S. Art. 4413(202), Sec. 5.)

**Sec. 92.013. Policy Board for Services to the Visually Handicapped**

(a) The Policy Board for Services to the Visually Handicapped is established.

(b) The board is composed of 10 members appointed by the governor with the following qualifications:

(1) the president of a state organization of the blind to alternate every two years;

(2) the president of the student body of the Texas School for the Blind or a visually handicapped student in a public school to serve as ex officio member;

(3) the president of the state society of ophthalmology or the state association of optometry to alternate every two years;

(4) a special education teacher who works with the visually handicapped at the Texas School for the Blind or in a public school to alternate every two years;

(5) a parent of a multiply handicapped blind child;

(6) a parent of a visually handicapped child;

(7) a blind person not employed in rehabilitation or special education; and

(8) three representatives of the general public.

(c) Members of the board serve for terms of two years. Members do not receive a salary but are entitled to reimbursement for actual and necessary expenses incurred in carrying out their duties.

(d) The board shall advise the administrator of the needs of the visually handicapped in this state, recommend methods of meeting those



needs, and assist the administrator in evaluating state programs and services provided for the visually handicapped. The board shall also assist the administrator in establishing the policies and rules required to implement the provisions of this chapter. (R.S. Art. 4413(202), Sec. 6.)

[Sections 92.014-92.020 reserved for expansion]

### SUBCHAPTER C. POWERS AND DUTIES OF THE OFFICE

#### Sec. 92.021. General Functions of the Office

(a) The office shall provide advocacy and ombudsmanship services for visually handicapped citizens of the state.

(b) The office shall hear, consider, and mediate or resolve differences among state-supported organizations responsible for the direct extension of services to visually handicapped individuals if the organizations are unable to resolve their differences in a manner consistent with the best interests of visually handicapped individuals.

(c) The office shall assure effective coordination of services provided by agencies represented on the advisory council so that the efforts of those agencies are complementary rather than fragmented and duplicative.

(d) The office shall serve as an information center and referral resource for the visually handicapped.

(e) The office shall evaluate the impact of agencies, departments, and institutions that provide services or programs relevant to the needs of visually handicapped individuals and shall evaluate the development of sufficient specialized personnel to meet those needs. The office shall assess the cost-effectiveness of all services authorized and funded by the legislature to assist visually handicapped individuals either directly or indirectly.

(f) The office shall develop mechanisms and procedures that assist visually handicapped individuals in bridging gaps between educational, institutional, rehabilitative, vocational, and related types of services operated by public and private nonprofit organizations throughout the state.

(g) The office shall receive, review, and investigate reports concerning individuals whose educational services have been terminated under individualized written service plans because the individuals were certified as being incapable of benefiting from the services. The office shall assure that the situation and circumstances of those individuals are appropriately reviewed at least once annually in accordance with the requirements of law.

(h) The office shall generally supervise, oversee, and assure the effective management and operation of:

(1) a centralized state register of the blind and visually handicapped;

(2) a state program of purchasing goods and services manufactured or provided by handicapped individuals in nonprofit sheltered workshop facilities according to the requirements of law;

(3) a comprehensive diagnostic and evaluation center for multiply handicapped blind children and youth; and

(4) a centralized special media depository consisting of braille, large print, and recorded materials, and related types of media required by individuals unable to read ordinary print.

(i) The office shall develop standards and procedures to assure that all state agencies and departments responsible for extending substantial and identifiable services to visually handicapped individuals consider the

views of those individuals or groups in matters of policy development and implementation arising in the administration of authorized state service programs.

(j) The office shall provide accurate and timely information to the governor and the legislature regarding the practical impact of state services on the lives of visually handicapped citizens of the state, and shall recommend future funding levels, necessary changes in existing statutes, and related matters that affect the progressive and efficient improvement of services for the visually handicapped. (R.S. Art. 4413(202), Sec. 4(a).)

**Sec. 92.022. Limitation on Service Activities**

The office shall not undertake the direct operation of any substantial service activities that another state agency is authorized, capable, and willing to discharge. (R.S. Art. 4413(202), Sec. 4(b).)

**Sec. 92.023. Interagency Contracts**

An interagency contract or agreement entered into by state agencies, departments, or institutions to advance the purposes of this chapter or to facilitate the delivery of services to visually handicapped individuals is effective for all pertinent purposes when a copy of the contract or agreement is placed on file with the office. The type of interagency coordination and operation which this chapter encourages in the complex area of human services is beyond the contractual situations contemplated by the Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes). (R.S. Art. 4413(202), Sec. 4(c).)

[Sections 92.024–92.050 reserved for expansion]

**SUBCHAPTER D. CENTRAL MEDIA DEPOSITORY**

**Sec. 92.051. Purpose**

(a) The purpose of this subchapter is to establish a comprehensive central state depository for braille, large print, slow speed records and machines, tape recordings and tape players, and related forms of media that will enable the Texas State Library, the Central Education Agency, the State Commission for the Blind, volunteer organizations involved in the production of braille or recorded materials for the blind, the Library of Congress, and related types of organizations to work together more closely and effectively.

(b) It is the intent of this subchapter to allow various agencies and organizations interested in or responsible for such services to work together cooperatively in one facility without requiring one central management. (R.S. Art. 5446b, Sec. 1.)

**Sec. 92.052. Establishment of Central Media Depository**

(a) The Governor's Coordinating Office for the Visually Handicapped shall generally supervise the establishment and operation of a central media depository in Austin to house materials and devices required by blind and visually handicapped individuals or by other individuals who are unable to use ordinary printed materials.

(b) With the approval of the coordinating office, the agencies and organizations using or occupying space in the central media depository shall develop and periodically evaluate and modify specific arrangements for administrative support, sharing of staff and equipment, and related matters involved in the operation of the facility. (R.S. Art. 5446b, Secs. 2 and 3.)

**Sec. 92.053. Ancillary Services**

The coordinating office shall allow the central media depository to be used for the repair of special media and equipment required by individuals who are unable to use ordinary print and for research and demonstration, training, and the production of materials in special media by volunteer organizations. (R.S. Art. 5446b, Sec. 4.)

**Sec. 92.054. Funding**

The cost of establishing and operating the central media depository shall be paid with:

- (1) funds appropriated by the legislature for that purpose;
- (2) gifts, grants, bequests, and donations received by cooperating agencies for the establishment and support of the depository;
- (3) reasonable fees customarily charged for services by the agencies and organizations using or occupying the facility; and
- (4) funds budgeted by the cooperating agencies and organizations for that purpose pursuant to interagency contracts and agreements. (R.S. Art. 5446b, Sec. 5.)

[Sections 92.055–92.080 reserved for expansion]

**SUBCHAPTER E. REGISTER OF BLIND AND VISUALLY HANDICAPPED PERSONS****Sec. 92.081. Maintenance of Register**

The Governor's Coordinating Office for the Visually Handicapped shall generally supervise the maintenance of a current and comprehensive register of persons in the state who are blind or handicapped by a visual condition that is likely to deteriorate either to blindness or a substantial visual impairment. (R.S. Art. 3207d, Sec. 1.)

**Sec. 92.082. Reports**

(a) A person must comply with Subsection (b) of this section if the person establishes a professional or commercial relationship with a visually handicapped individual and:

- (1) is employed by an organization that is directly or indirectly supported by the state;
- (2) derives income from the sale of goods or services to the state or a political subdivision of the state; or
- (3) is licensed by the state to engage in a business or profession.

(b) A person described in Subsection (a) of this section shall inquire whether the visually handicapped person with whom a professional or commercial relationship has been established is known to the coordinating office, and, if not known, shall forward to the office the individual's name, age, sex, race, mailing address, and telephone number and Social Security number, if available. (R.S. Art. 3207d, Sec. 2.)

**Sec. 92.083. Registration**

The staff designated by the coordinating office to maintain the register of blind and visually handicapped individuals shall contact each person reported to the office pursuant to Section 92.082 of this code and shall include the person's name and other appropriate information on the register if it appears that the person's visual condition will require governmental services either immediately or in the future. (R.S. Art. 3207d, Sec. 3.)

**Sec. 92.084. Systems, Standards, and Procedures**

Systems, standards, and procedures developed for the register must assure:

(1) the effective sharing of information contained in the register by all state agencies that provide services beneficial to the blind and visually handicapped;

(2) the provision for inclusion in the register of information pertaining to state services to the blind and visually handicapped and the outcome of those services;

(3) the effective long-range planning of state services for the blind and visually handicapped;

(4) the meaningful evaluation of the effectiveness and impact of special services provided to blind and visually handicapped persons; and

(5) the maintenance of a process to monitor and review services to minimize unreasonable delays in the initiation of appropriate services, duplication of services, and inadequate coordination of educational, rehabilitative, or other special efforts made by various organizations periodically on behalf of blind or visually handicapped individuals. (R.S. Art. 3207d, Sec. 4.)

**Sec. 92.085. Data Processing**

The coordinating office may make necessary arrangements to develop cost-effective electronic data processing capabilities required to efficiently discharge the responsibilities enumerated in this subchapter. (R.S. Art. 3207d, Sec. 5.)

**CHAPTER 93. COMMITTEE ON PURCHASES OF BLIND-MADE PRODUCTS AND SERVICES**

**Section**

93.001. Purpose.

93.002. Texas Committee on Purchases of Blind-made Products and Services.

93.003. Application of Sunset Act.

93.004. Determination of Fair Market Price; Purchasing Procedures.

93.005. Procurement at Determined Price.

93.006. Technical Consultation.

93.007. Cooperation With Department of Corrections.

93.008. Correlation With Related Federal Programs.

93.009. Feasibility Study.

93.010. Rules.

**Sec. 93.001. Purpose**

The purpose of this chapter is to further the state's policy of encouraging and assisting handicapped citizens to achieve maximum personal independence by engaging in useful and productive activities and, in addition, to research, demonstrate, and develop approaches through which the state's purchase of blind-made goods and services, if shown to be sound and effective in meeting the needs of severely handicapped individuals, may be generally extended to disability groups other than the blind. (R.S. Art. 664—5, Secs. 1(a) and (c).)

**Sec. 93.002. Texas Committee on Purchases of Blind-made Products and Services**

(a) The Texas Committee on Purchases of Blind-made Products and Services is composed of the following members who are appointed by the

administrator of the Governor's Coordinating Office for the Visually Handicapped:

- (1) a private citizen conversant with the problems incidental to the employment of the blind;
  - (2) a representative of a sheltered workshop for the blind organized under state law;
  - (3) a representative of a sheltered workshop organized under state law to serve disability groups other than the blind;
  - (4) a representative of a volunteer organization operated primarily to serve a disability group or groups other than the blind;
  - (5) a representative of the department of a state-supported institution of higher education offering an advanced degree in vocational rehabilitation counseling;
  - (6) a representative of the department of the Central Education Agency concerned with vocational education or with special education;
  - (7) a representative of the State Board of Control;
  - (8) a representative of the State Commission for the Blind; and
  - (9) a representative of the Texas Department of Mental Health and Mental Retardation.
- (b) Lay members of the committee serve for terms of two years expiring on January 31 of odd-numbered years. Members receive no compensation but are entitled to reimbursement for expenses actually incurred in the performance of their duties.
- (c) The committee shall select a presiding officer from its membership.
- (d) A member who is unable to attend a meeting of the committee may designate a person from his or her agency or department to represent him or her at the meeting. (R.S. Art. 664—5, Sec. 2.)

**Sec. 93.003. Application of Sunset Act**

The Texas Committee on Purchases of Blind-made Products and Services is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the committee is abolished and this chapter expires effective September 1, 1985. (R.S. Art. 664—5, Sec. 2a.)

**Sec. 93.004. Determination of Fair Market Price; Purchasing Procedures**

- (a) The committee shall determine the fair market price of all products and services manufactured or provided by the blind and offered for sale to the various agencies and departments of the state and its political subdivisions by a nonprofit agency for the blind organized under state law and recognized by the State Commission for the Blind as capable of contributing to the purposes of this chapter.
- (b) The committee shall revise the prices periodically to reflect changing market conditions.
- (c) The committee shall make rules regarding specifications, time of delivery, designation of a central nonprofit agency to facilitate the distribution of orders among agencies for the blind, and other procedures necessary to achieve the purposes of this chapter.
- (d) Requisitions for products and services required by state agencies are processed by the State Board of Control according to rules established by the board. (R.S. Art. 664—5, Sec. 3.)

**Sec. 93.005. Procurement at Determined Price**

A suitable product or service that meets applicable specifications established by the state or its political subdivisions and that is available

within the time specified must be procured from a nonprofit agency for the blind at the price determined by the committee to be the fair market price. (R.S. Art. 664—5, Sec. 4.)

**Sec. 93.006. Technical Consultation**

Representatives of the governor's budget office and the Legislative Budget Board shall consult with the committee on matters relating to the economic consequences of the state's purchases of blind-made goods and services. The representatives are entitled to access to all pertinent records and shall make records to the legislature periodically as they deem necessary. (R.S. Art. 664—5, Sec. 5.)

**Sec. 93.007. Cooperation With Department of Corrections**

The committee shall cooperate with the Texas Department of Corrections to accomplish the purposes of this chapter and to contribute to the economy of state government. The committee and the department may enter into contractual agreements, cooperative working relationships, or other arrangements necessary for effective coordination and the realization of the objectives of both agencies. (R.S. Art. 664—5, Sec. 6.)

**Sec. 93.008. Correlation With Related Federal Programs**

The committee may adopt procedures, practices, and standards used for federal programs similar to the state program established in this chapter. (R.S. Art. 664—5, Sec. 7.)

**Sec. 93.009. Feasibility Study**

(a) The committee shall study the feasibility of extending the program established by this chapter to severely handicapped individuals whose disabilities are not of a visual nature.

(b) The study must include:

(1) an assessment of the potential sales to the state and its political subdivisions of goods and services manufactured or provided by severely handicapped individuals in nonprofit, sheltered workshops in Texas;

(2) an estimate of the number of individuals who might benefit from an extension of the program and who are not being effectively served through other available state-supported programs of education and special services for the handicapped;

(3) consideration of the manufacturing capabilities of sheltered workshops throughout the state; and

(4) consideration of additional costs, if any, or additional savings, if any, accruing to the state's General Revenue Fund if the program were expanded.

(c) The committee shall report its findings and recommendations to the governor and the legislature. If the committee recommends expansion of the program, the committee shall make specific recommendations concerning required statutory changes and implementation schedules and procedures.

(d) In conducting the feasibility study, the committee and cooperating sheltered workshops may use the labor and services of individuals with various types of disabilities of a nonvisual nature in manufacturing goods and services for the state and its political subdivisions. (R.S. Art. 664—5, Secs. 8 and 9.)

**Sec. 93.010. Rules**

After consulting with the committee and reviewing the committee's recommendations, the Governor's Coordinating Office for the Visually Handicapped may make rules necessary to implement and administer this chapter. (R.S. Art. 664—5, Sec. 10.)

## CHAPTER 94. VENDING FACILITIES OPERATED BY BLIND PERSONS

### Section

- 94.001. Definitions.
- 94.002. License or Permit Required.
- 94.003. Licensing Procedure.
- 94.004. Location of Vending Facilities.
- 94.005. Issuance of Licenses; Eligibility.
- 94.006. Expiration, Renewal, and Revocation of Licenses.
- 94.007. Operation of Vending Facilities Under the Rehabilitation Commission.
- 94.008. Closing Certain Facilities Prohibited.
- 94.009. Employment of Assistants.
- 94.010. Competing Vending Machines.
- 94.011. Vending Facility Equipment and Stock.
- 94.012. Duties and Privileges of Parties.
- 94.013. Training Programs.
- 94.014. Conformity With Federal Statutes.
- 94.015. Application of Chapter.

### Sec. 94.001. Definitions

In this chapter:

(1) "Blind person" means a person having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(2) "Vending facility" means a facility in which food, drinks, drugs, novelties, souvenirs, tobacco products, notions, or related items are sold regularly. The term excludes facilities consisting solely of vending machines that do not compete directly or indirectly with a facility that is or could be operated by a vocationally handicapped person.

(3) "State property" means land and buildings owned, leased, or otherwise controlled by the state.

(4) "Agency" means the state agency in charge of state property.

(5) "Handicapped" means a physical or mental condition that the commission or rehabilitation commission determines to constitute a substantial vocational disadvantage.

(6) "Commission" means the State Commission for the Blind.

(7) "Rehabilitation commission" means the Texas Rehabilitation Commission. (V.A.C.S. Art. 678d—1, Sec. 1.)

### Sec. 94.002. License or Permit Required

No person may operate a vending facility or a facility with vending machines or other coin-operated devices on state property unless the person is licensed to do so by the commission or is authorized to do so by an agency granted a permit to arrange for vending facilities. (V.A.C.S. Art. 678d—1, Sec. 2.)

### Sec. 94.003. Licensing Procedure

(a) On its own initiative or at the request of an agency that controls state property, the commission shall survey the property, or blueprints and other available information concerning the property, to determine whether the installation of a vending facility is feasible and consonant with the commission's vocational rehabilitation objectives.

(b) If the installation of the facility is feasible, the commission shall either license a blind person to operate a facility to be installed by the commission or allow the rehabilitation commission to install a facility to be operated by a handicapped person who is not blind according to rules and procedures comparable to those adopted by the commission. The commission and the rehabilitation commission may enter into agreements relating to management services and related forms of necessary assistance. (V.A.C.S. Art. 678d—1, Sec. 3.)

**Sec. 94.004. Location of Vending Facilities**

(a) With the concurrence of the agency in charge of state property, the commission shall designate the location of vending facilities that have been requested by the agency.

(b) The agency responsible for state property shall alter the property to make it suitable for the proper operation of the vending facilities. To this end, the agency in charge of constructing new state property shall consult with the commission during the planning stage on the construction. (V.A.C.S. Art. 678d—1, Sec. 9.)

**Sec. 94.005. Issuance of Licenses; Eligibility**

(a) The commission may issue a license to operate its vending facilities on state property to blind citizens of the state who are capable of operating the facilities in a manner that is reasonably satisfactory to all parties concerned.

(b) Before issuing a license to a person, the commission shall determine whether the person has the physical, psychological, and personal traits and abilities required to operate a vending facility in a satisfactory manner.

(c) The commission shall maintain a roster of the names of each person who has been certified as suitable for licensing. If two or more equally qualified persons are listed on the roster and apply for a license to operate an available vending facility, the commission shall issue the license to the person who is most in need of employment.

(d) The granting of a license does not vest the licensee with property or other rights which may constitute the basis of a cause of action, at law or in equity, against the state or its officers or employees. (V.A.C.S. Art. 678d—1, Secs. 6(a), (b), (c), (d), and (f).)

**Sec. 94.006. Expiration, Renewal, and Revocation of Licenses**

(a) A license or general permit to operate a vending facility on state property is valid for a period of three years from the date it is issued.

(b) The commission shall review each license or permit prior to its expiration and shall issue a new or different license or permit as the circumstances warrant.

(c) The commission and the agency may consent mutually to revoke a general permit prior to its expiration if changed circumstances warrant that action.

(d) A blind person's wilful failure to comply with the commission's rules or the provisions of this chapter constitutes grounds for the automatic revocation of the person's license.

(e) The commission shall adopt substantive and procedural rules governing the revocation of licenses. (V.A.C.S. Art. 678d—1, Secs. 4 and 5.)

**Sec. 94.007. Operation of Vending Facilities Under the Rehabilitation Commission**

(a) If the commission determines that a blind person could not properly operate a vending facility at a particular location, the rehabilitation commission may survey the property to determine whether a handicapped



person whose disability is not of a visual nature could operate the facility in a proper manner.

(b) The commission and the rehabilitation commission may develop procedures and methods of exchanging information necessary to implement cooperative activities.

(c) The installation and operation of a vending facility by the rehabilitation commission must conform to the provisions of this chapter applicable to vending facilities installed by the commission. (V.A.C.S. Art. 678d—1, Secs. 6(e) and 7(a).)

**Sec. 94.008. Closing Certain Facilities Prohibited**

Neither a vending facility operated by a blind or otherwise vocationally handicapped individual nor a vending facility location surveyed by the commission may be closed as a result of the transfer of state property from one agency to another, the alteration of a state building, or the reorganization of a state agency unless the commission or the rehabilitation commission agrees to the closing. (V.A.C.S. Art. 678d—1, Sec. 12(b).)

**Sec. 94.009. Employment of Assistants**

(a) If an individual licensed to operate a vending facility on state property requires an assistant, a qualified visually handicapped person must be given preference for employment. If the commission determines that a visually handicapped person could not perform the labor for which an assistant is required, or if a visually handicapped person is not available, a handicapped person whose disability is not of a visual nature must be given preference for employment. If no handicapped person is available for the job, preference must be given to a person who is socially, culturally, economically, or educationally disadvantaged.

(b) An assistant employed by a blind person licensed by the commission must be approved by the commission, and the deliberate refusal of a blind licensee to comply with this section constitutes grounds for the revocation of his or her license. (V.A.C.S. Art. 678d—1, Secs. 7(b) and (c).)

**Sec. 94.010. Competing Vending Machines**

(a) If the commission and an agency agree to the installation and operation of an additional vending facility or vending machine on property that already has a commission-sponsored vending facility, no additional permit or license is required. However, the installation of a competing vending facility consisting of vending machines or other coin-operated devices must be authorized by the commission. The commission's authorization must be made with a view toward providing the greatest economic benefits for blind persons consonant with supplying the additional services required at the building.

(b) State agencies shall cooperate and negotiate in good faith to accomplish the purposes of this chapter.

(c) Vocationally handicapped individuals who operate vending facilities on state property are entitled to receive all commissions from vending machines installed on the same property. If two or more vending facilities are operated by vocationally handicapped persons in a building in which vending machines are installed, the commission shall divide the commissions from the vending machines among the handicapped operators in a manner that will achieve equity and equality in the incomes of the handicapped operators. If the commission and the rehabilitation commission have decided not to locate a vending facility in a building, the agency to whom a general permit has been issued shall determine the

assignment of the commissions from vending machines installed in the building. (V.A.C.S. Art. 678d—1, Sec. 8.)

**Sec. 94.011. Vending Facility Equipment and Stock**

(a) The commission may supply a blind vending facility operator with equipment and initial stock necessary for the operator to begin business.

(b) The commission shall collect and set aside from the proceeds of the operation of its vending facilities enough money:

(1) to insure a sufficient amount of initial stock for the facilities and for their proper maintenance;

(2) to pay the costs of supervision and other expenses incidental to the operation of the facilities; and

(3) to pay other program costs to the extent necessary to assure fair and equal treatment of the blind persons licensed to operate the facilities and to the extent allowed under federal programs that provide financial support to the commission.

(c) Except for purchasing and installing original equipment, the operation of commission-sponsored vending facilities must be as self-supporting and self-sustaining as possible. To achieve this end, the commission shall periodically review and, when necessary, revise its schedules for collecting and setting aside money from the proceeds of its vending facilities. (V.A.C.S. Art. 678d—1, Sec. 10.)

**Sec. 94.012. Duties and Privileges of Parties**

(a) The commission may promulgate rules and initiate procedures necessary to implement this chapter.

(b) A blind person licensed to operate a vending facility on state property shall operate the facility in accordance with law and the commission's rules and policies.

(c) The agency in charge of state property shall cooperate with the commission and its blind licensees to accomplish the purposes of this chapter. The agency shall also furnish all necessary utility service, including connections and outlets required for the installation of the facility, janitorial and garbage disposal services where feasible, and other related assistance. (V.A.C.S. Art. 678d—1, Sec. 11.)

**Sec. 94.013. Training Programs**

The commission may establish training or experimentation locations necessary to train blind persons who desire to be licensed to operate vending facilities and to develop techniques which will allow blind persons to operate the facilities or related types of small businesses more efficiently and productively. (V.A.C.S. Art. 678d—1, Sec. 11A(b).)

**Sec. 94.014. Conformity With Federal Statutes**

(a) This chapter shall be construed in a manner consistent with the requirements of federal programs that provide financial assistance to the commission.

(b) If a provision of this chapter conflicts with a federal program requirement, the commission may waive or modify the provision to the extent necessary to secure the full benefits of the federal program. (V.A.C.S. Art. 678d—1, Sec. 11A(a).)

**Sec. 94.015. Application of Chapter**

(a) This chapter does not apply to property over which the federal government maintains partial or complete control or to property maintained and operated by state-supported institutions of higher education. However, the commission may enter into agreements with state institutions of higher education concerning the use of blind labor in vending facilities at the institutions.

(b) This chapter does not apply to vending facilities operated by an institution under the control of the Texas Department of Mental Health and Mental Retardation, or its successor, if the vending facilities are operated without profit for the benefit of the patients at the institution.

(c) This chapter does not prohibit the commission from selecting blind persons to operate other suitable types of vending facilities or business enterprises, and the chapter does not prohibit the installation of automated vending facilities serviced by blind persons. (V.A.C.S. Art. 678d—1, Secs. 12(a), (d), (f).)

## **TITLE 6. SERVICES FOR THE ELDERLY**

### **CHAPTER 101. GOVERNOR'S COMMITTEE ON AGING**

#### **SUBCHAPTER A. ADMINISTRATIVE PROVISIONS**

##### **Section**

- 101.001. Governor's Committee on Aging.
- 101.002. Application of Sunset Act.
- 101.003. Presiding Officer.
- 101.004. Coordinator of Aging; Other Personnel.
- 101.005. Governor's Citizens Advisory Council.

[Sections 101.006–101.020 reserved for expansion]

#### **SUBCHAPTER B. POWERS AND DUTIES OF COMMITTEE**

- 101.021. Rules.
- 101.022. General Functions of Committee.
- 101.023. Community Senior Citizens Employment Programs.
- 101.024. Voluntary Community Services Programs.
- 101.025. Cooperation With Federal and State Agencies.
- 101.026. Donations.

#### **SUBCHAPTER A. ADMINISTRATIVE PROVISIONS**

##### **Sec. 101.001. Governor's Committee on Aging**

(a) The Governor's Committee on Aging is composed of nine members appointed by the governor with the advice and consent of the senate. To be eligible for appointment to the committee, a person must have demonstrated an interest in and knowledge of the problems of aging.

(b) Members of the committee serve for staggered terms of six years with the terms of three members expiring every two years. A member may be reappointed to the committee.

(c) Members serve without compensation, but are entitled to reimbursement for actual travel expenses incurred in the performance of their duties.

(d) The committee shall hold meetings twice annually and may hold other meetings called by the chairman. (V.A.C.S. Art. 695k, Secs. 1(a), (b), (c), and (e).)

##### **Sec. 101.002. Application of Sunset Act**

The Governor's Committee on Aging is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the committee is abolished and this

chapter expires effective September 1, 1985. (V.A.C.S. Art. 695k, Sec. 1(f).)

**Sec. 101.003. Presiding Officer**

(a) In addition to the nine members of the committee, the governor shall appoint a presiding officer of the Governor's Committee on Aging, who shall direct the work of the coordinator of aging and the committee.

(b) If the person appointed as presiding officer holds another state office, the duties of the presiding officer's position are considered an extension of the duties of the other state office.

(c) The presiding officer serves during the tenure of the appointing governor.

(d) The presiding officer serves without compensation but is entitled to reimbursement for actual travel expenses incurred in performing the duties of the office. (V.A.C.S. Art. 695k, Sec. 2.)

**Sec. 101.004. Coordinator of Aging; Other Personnel**

(a) The governor shall appoint a coordinator of aging, who shall discharge all executive and administrative functions of the committee. The coordinator must be a person with executive ability and experience in the area of aging.

(b) The governor shall appoint other necessary personnel.

(c) Salaries and other office expenses are paid with funds appropriated to the governor's office for those purposes.

(d) The committee may accept services performed by other agencies to accomplish the purposes of this chapter. (V.A.C.S. Art. 695k, Sec. 3.)

**Sec. 101.005. Governor's Citizens Advisory Council**

(a) The Governor's Citizens Advisory Council is composed of two members appointed by the governor from each senatorial district. Council members serve at the governor's pleasure and without compensation.

(b) The council shall work under the committee's direction. (V.A.C.S. Art. 695k, Sec. 4.)

[Sections 101.006–101.020 reserved for expansion]

**SUBCHAPTER B. POWERS AND DUTIES OF COMMITTEE**

**Sec. 101.021. Rules**

(a) The committee shall adopt rules governing the functions of the committee.

(b) The committee by rule or order may delegate its rights, powers, and duties to the coordinator. (V.A.C.S. Art. 695k, Sec. 1(d).)

**Sec. 101.022. General Functions of Committee**

(a) The committee shall develop and strengthen the services available for the aged in the state by coordinating services provided by governmental and private agencies and facilities.

(b) The committee shall extend and expand services for the aged by coordinating the interest and efforts of local communities in studying the problems of the aged citizens of this state.

(c) The committee shall encourage, promote, and aid in the establishment of programs and services on a local level that improve the living conditions of the aged by enabling them to more fully enjoy and participate in family and community life.

(d) The committee shall sponsor voluntary community rehabilitation and recreational facilities to improve the general welfare of the aged.

(e) The committee, through the coordinator of aging, shall cooperate with state and federal agencies and other organizations in conducting studies and surveys on the special problems of the aged in matters such

as mental and physical health, housing, family relationships, employment, income, vocational rehabilitation, recreation, and education. The committee shall make appropriate reports and recommendations to the governor and to state and federal agencies. (V.A.C.S. Art. 695k, Sec. 5.)

**Sec. 101.023. Community Senior Citizens Employment Programs**

(a) In this section, "suitable employment" means employment which is commensurate with the individual's skills and ability and for which compensation is paid equal to the federal minimum wage rate.

(b) The committee may establish and administer a community program for persons 55 years of age or older who lack suitable employment and have family incomes under federal poverty guidelines.

(c) The committee may contract with a public agency or a private, nonprofit organization with experience in managing similar programs to employ persons under this program in providing recreation, beautification, conservation, or restoration services, or public service employment positions for state, county, city, or regional governments or school districts. The committee may not contract with an organization that is not a subscriber under the state workers' compensation law or that does not pay the federal minimum wage rate or the prevailing wage rate for the particular job, whichever is greater.

(d) The state shall finance 80 percent of the cost of the program, and the governments receiving the services shall finance 20 percent of the cost. (V.A.C.S. Art. 695k, Sec. 5a.)

**Sec. 101.024. Voluntary Community Services Programs**

(a) The committee shall disburse state funds appropriated for the purpose to local public agencies or private, nonprofit corporations that operate programs to recruit retired persons to perform volunteer community services.

(b) A public agency or private, nonprofit corporation may not receive state money under this section if it is not entitled to receive federal matching money for the same purpose.

(c) The committee by rules shall establish guidelines or formulas to determine the proportion of state money distributed to each public agency or private, nonprofit corporation. The committee by rules may establish additional qualifications to receive the state money.

(d) State funds disbursed under this section may not be used to pay compensation to volunteer workers or for purposes other than financing the operation or administration of the volunteer programs, but it may be used to defray expenses incurred by volunteers in the performance of volunteer work. The committee by rules may further limit the purposes for which the state money may be spent. (V.A.C.S. Art. 695k, Sec. 6a.)

**Sec. 101.025. Cooperation With Federal and State Agencies**

(a) The committee is the state agency designated to handle federal programs relating to the aging that require action within the state and that are not the specific responsibility of another state agency under federal or state law.

(b) The committee is not intended to supplant or to take over from the counties and municipalities of this state or from other state agencies or facilities any of the specific responsibilities that they hold. The committee shall cooperate with federal and state agencies, counties, and municipalities and private agencies or facilities in the state in accomplishing the purposes of this chapter. (V.A.C.S. Art. 695k, Sec. 6.)

**Sec. 101.026. Donations**

The committee may accept and solicit gifts or grants of money or property from public or private sources. Donations of money must be

placed in a special fund in the state treasury and expended on warrants drawn by the comptroller on order of the committee. Donations of real property and of personal property other than money may be used or sold as the committee considers proper. (V.A.C.S. Art. 695k, Sec. 7.)

## **TITLE 7. REHABILITATION OF HANDICAPPED AND DISABLED**

### **CHAPTER 111. TEXAS REHABILITATION COMMISSION**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

**Section**

**111.001. Purpose.**

**111.002. Definitions.**

[Sections 111.003–111.010 reserved for expansion]

#### **SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**111.011. Texas Rehabilitation Commission.**

**111.012. Application of Sunset Act.**

**111.013. Composition of Board; Appointment; Terms.**

**111.014. Meetings.**

**111.015. Expenses.**

**111.016. Advisory Committees.**

**111.017. Commissioner.**

**111.018. Administrative Regulations.**

**111.019. Planning.**

**111.020. Administrative Units; Personnel.**

**111.021. Reports.**

**111.022. Disbursement of Funds.**

**111.023. Other Duties.**

**111.024. Delegation to Employees.**

[Sections 111.025–111.050 reserved for expansion]

#### **SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION**

**111.051. Commission as Principal Authority.**

**111.052. General Functions.**

**111.053. Cooperation With the Federal Government.**

**111.054. Obtaining Federal Funds.**

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**111.056. Gifts and Donations to the Commission.**

**111.057. Unlawful Use of Lists of Names.**

[Sections 111.058–111.080 reserved for expansion]

#### **SUBCHAPTER D. EXTENDED REHABILITATION SERVICES**

**111.081. Authority.**

**111.082. Administration.**

**111.083. Participant Contributions.**

**111.084. Standards.**

**111.085. Quarterly Payments.**

**111.086. Funds; Rules.**

## SUBCHAPTER A. GENERAL PROVISIONS

**Sec. 111.001. Purpose**

It is the policy of the State of Texas to provide rehabilitation and related services to eligible handicapped individuals so that they may prepare for and engage in a gainful occupation or achieve maximum personal independence. (Educ.Code, Sec. 30.01.)

**Sec. 111.002. Definitions**

In this chapter:

(1) "Commission" means the Texas Rehabilitation Commission.

(2) "Commissioner" means the chief administrative officer of the commission.

(3) "Handicapped individual" means any individual, except one whose disability is of a visual nature, who has a disability which constitutes a substantial handicap to employment, or to achieving maximum personal independence, but which is of a nature that rehabilitation services may reasonably be expected to enable the individual to engage in a gainful occupation, including a gainful occupation which is more consistent with his or her capacities and abilities or render the individual fit for self-care and independent living. The term includes an individual for whom rehabilitation services are necessary for the determination of rehabilitation potential. The term also includes individuals disadvantaged by reason of their youth or advanced age, low educational attainments, ethnic or cultural factors, prison or delinquency records, or other conditions that constitute a barrier to employment, and the term may include members of a handicapped individual's family when the provision of rehabilitation services to family members is necessary for the rehabilitation of a handicapped individual.

(4) "Disability" means a physical or mental condition that materially limits, contributes to limiting, or, if not corrected, will probably result in limiting an individual's activities or functioning. It includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental, or other factors. The term includes low educational attainment, ethnic or cultural factors, youth or advanced age, or other factors that constitute a barrier to employment or self-care and independent living.

(5) "Substantial handicap to employment" means a disability that impedes an individual's occupational performance by preventing the individual from obtaining, retaining, or preparing for a gainful occupation consistent with the individual's capacities and abilities.

(6) "Rehabilitation services" means any goods and services necessary to enable a handicapped individual to engage in a gainful occupation or independent living, or to determine the individual's rehabilitation potential, and to provide work adjustment training or adult social services. To enable a handicapped individual to engage in a gainful occupation or independent living, may require the commission to engage in or contract for such activities as outreach, diagnosis and appraisal, treatment, training, job placement or self-employment, guidance, and counseling. Services may include maintenance, transportation, and training allowances, not exceeding the estimated cost of subsistence during rehabilitation, for the handicapped indi-

vidual as well as members of the individual's family when necessary for the rehabilitation of the handicapped individual.

(7) "Gainful occupation" includes employment in the competitive labor market; practice of a profession; self-employment; homemaking, farm, or family work (including work for which payment is in kind rather than in cash); sheltered employment; and home industries or other gainful homebound work.

(8) "Establishment of a rehabilitation facility" means:

(A) the expansion, remodeling, or alteration of existing buildings necessary to adapt or increase the effectiveness of the buildings for rehabilitation facility purposes;

(B) the acquisition of initial equipment for those purposes;

or

(C) the initial staffing of a rehabilitation facility.

(9) "Establishment of a workshop" means the expansion, remodeling, or alteration of existing buildings necessary to adapt the buildings to workshop purposes or to increase the employment opportunities in workshops, and the acquisition of initial equipment necessary for new workshops or to increase the employment opportunities in workshops.

(10) "Construct" includes construction of new buildings, acquisition of existing buildings, and expansion, remodeling, alteration, and renovation of existing buildings, and initial equipment of new, newly acquired, expanded, remodeled, altered, or renovated buildings.

(11) "Extended rehabilitation services" means supplying rehabilitation services to:

(A) a mentally or physically handicapped person beyond a period of 18 months from the initial date that eligibility to receive vocational rehabilitation services was determined; or

(B) mentally or physically handicapped persons who were not eligible for vocational rehabilitation services under laws and regulations in effect before April 2, 1969, and who can now benefit from the provisions of this chapter.

(12) "Extended sheltered workshop employment" means employment in a sheltered workshop of persons with mental or physical handicaps that render the persons incapable of competing in the open or customary labor market.

(13) "Extended community residence" means a group living arrangement providing the essentials of community living, such as room, board, clothing, evening and nighttime supervision, recreational activities, and transportation to and from work for persons living therein who are in extended sheltered workshop employment or who, while physically or mentally handicapped, are employed in the open or customary labor market.

(14) "Sheltered workshop" means an occupation-oriented facility operated by a nonprofit agency, public or private, which except for its staff, employ: only mentally or physically handicapped persons. (Educ.Code, Secs. 30.02, 30.71.)

[Sections 111.003–111.010 reserved for expansion]

## SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

### Sec. 111.011. Texas Rehabilitation Commission

The Texas Rehabilitation Commission is composed of the board of the Texas Rehabilitation Commission, a commissioner, and other officers and



employees required to efficiently carry out the purposes of this chapter. (Educ.Code, Sec. 30.11.)

**Sec. 111.012. Application of Sunset Act**

The Texas Rehabilitation Commission is subject to the Texas Sunset Act (Art. 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished and this chapter expires effective September 1, 1985. (Educ.Code, Sec. 30.11.)

**Sec. 111.013. Composition of Board; Appointment; Terms**

(a) The board of the Texas Rehabilitation Commission is composed of six members appointed by the governor with the advice and consent of the senate. Members serve for staggered terms of six years with the terms of two members expiring every two years.

(b) Appointees must be outstanding citizens of the state who have demonstrated a constructive interest in rehabilitation services. No paid employee of an agency carrying on work for the commission is eligible for appointment, nor is a person who owns or is employed by an organization providing rehabilitation services or related services through the commission.

(c) The governor shall designate one board member as presiding officer. (Educ.Code, Sec. 30.12.)

**Sec. 111.014. Meetings**

The board shall meet quarterly in regular session and on call by the presiding officer when necessary for the transaction of agency business. (Educ.Code, Sec. 30.13.)

**Sec. 111.015. Expenses**

Board members serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in the discharge of their official duties. (Educ.Code, Sec. 30.14.)

**Sec. 111.016. Advisory Committees**

(a) The board may appoint an advisory committee to make recommendations for consideration by the board concerning any matter that the advisory committee believes to be pertinent to the purposes of this chapter.

(b) The advisory committee is composed of nine members appointed by the board. Committee members serve for staggered terms of three years with the terms of three members expiring each year.

(c) The advisory committee shall meet at least once in each calendar quarter and may meet on call of the board.

(d) The members of the advisory committee serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in attending the official meetings of the advisory committee.

(e) To be eligible for appointment to the advisory committee a person must have demonstrated an active and constructive interest in the rehabilitation of handicapped people.

(f) The board may also create from time to time additional technical advisory committees necessary to achieve the purposes of this chapter. The members of the committees serve without compensation unless compensation is specifically provided for by appropriation. (Educ.Code, Sec. 30.15.)

**Sec. 111.017. Commissioner**

This chapter is administered by the commissioner under operational policies established by the board. The commissioner is appointed by the board on the basis of education, training, experience, and demonstrated ability. The commissioner serves at the pleasure of the board and is sec-

retary to the board, as well as chief administrative officer of the agency. (Educ.Code, Sec. 30.16.)

**Sec. 111.018. Administrative Regulations**

In carrying out his or her duties under this chapter, the commissioner shall, with the approval of the board, make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations as necessary to carry out the purposes of this chapter. (Educ.Code, Sec. 30.17.)

**Sec. 111.019. Planning**

The commissioner shall, with the approval of the board, make long-range and intermediate plans for the scope and development of the program and make decisions regarding the allocation of resources in carrying out the plans. (Educ.Code, Sec. 30.18.)

**Sec. 111.020. Administrative Units; Personnel**

(a) The commissioner shall, with the approval of the board, establish appropriate subordinate administrative units.

(b) The commissioner shall, under personnel policies adopted by the board, appoint the personnel necessary for the efficient performance of the functions of the agency. (Educ.Code, Sec. 30.19.)

**Sec. 111.021. Reports**

The commissioner shall prepare and submit to the board annual reports of activities and expenditures and, prior to each regular session of the legislature, estimates of funds required for carrying out the purposes of this chapter, and, with the approval of the board, shall submit the reports to the governor and the legislature. (Educ.Code, Sec. 30.20.)

**Sec. 111.022. Disbursement of Funds**

The commissioner shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of this chapter. (Educ.Code, Sec. 30.21.)

**Sec. 111.023. Other Duties**

The commissioner shall take other action as necessary or appropriate to carry out the purposes of this chapter. (Educ.Code, Sec. 30.22.)

**Sec. 111.024. Delegation to Employees**

The commissioner may, with the approval of the board, delegate to any officer or employee of the commission those powers and duties, except the making of regulations and the appointment of personnel, the commissioner finds necessary to carry out the purposes of this chapter. (Educ. Code, Sec. 30.23.)

[Sections 111.025–111.050 reserved for expansion]

**SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION**

**Sec. 111.051. Commission as Principal Authority**

The Texas Rehabilitation Commission is the principal authority in the state on rehabilitation of handicapped and disabled individuals, except for those matters relating to individuals whose handicaps or disabilities are of a visual nature. All other state agencies engaged in rehabilitation activities and related services to individuals whose handicaps or disabilities are not of a visual nature shall coordinate those activities and services with the commission. (Educ.Code, Sec. 30.41.)

**Sec. 111.052. General Functions**

(a) The agency shall, to the extent of resources available and priorities established by the board, provide rehabilitation services directly or

through public or private resources to individuals determined by the commissioner to be eligible for the services.

(b) In carrying out the purposes of this chapter, the commission may:

(1) cooperate with other departments, agencies, political subdivisions, and institutions, both public and private, in providing the services authorized by this chapter to eligible individuals, in studying the problems involved, and in planning, establishing, developing, and providing necessary or desirable programs, facilities, and services, including those jointly administered with state agencies;

(2) enter into reciprocal agreements with other states;

(3) establish or construct rehabilitation facilities and workshops, make grants to public agencies, make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities, and operate facilities for carrying out the purposes of this chapter;

(4) conduct research and compile statistics relating to the provision of services to or the need for services by disabled individuals;

(5) provide for the establishment, supervision, management, and control of small business enterprises to be operated by severely handicapped individuals where their operation will be improved through the management and supervision of the commission; and

(6) contract with schools, hospitals, private industrial firms, and other agencies and with doctors, nurses, technicians, and other persons for training, physical restoration, transportation, and other rehabilitation services. (Educ.Code, Sec. 30.42.)

**Sec. 111.053. Cooperation With the Federal Government**

The commission shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this chapter or of any federal statutes pertaining to rehabilitation, and to this end may adopt methods of administration that are found by the federal government to be necessary, and that are not contrary to existing state laws, for the proper and efficient operation of the agreements, arrangements, or plans for rehabilitation. (Educ.Code, Sec. 30.43.)

**Sec. 111.054. Obtaining Federal Funds**

The commission may comply with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportion possible. (Educ.Code, Sec. 30.44.)

**Sec. 111.055. Finances**

The state treasurer may receive money appropriated by congress and allotted to Texas for carrying out the purposes of this chapter or authorized agreements, arrangements, or plans, and may make disbursements on the certification of the commissioner. All public money available to the commission must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements required by law for other public funds in the state treasury. The state auditor shall regularly audit all accounts established by the commission in local depositories to assure that nonpublic funds made available to the commission through gift or bequest, by local organizations desiring to participate in projects for the handicapped authorized in Article XVI, Section 6, Subsection (b), of the Texas Constitution, or by endowment or other means, are expended in a manner consistent with the purposes of this chapter. The commission shall comply with the reporting procedures prescribed by the state auditor for the commission's acceptance, holding, investment, and use of nonpublic funds. (Educ.Code, Sec. 30.45.)

**Sec. 111.056. Gifts and Donations to the Commission**

The commission may receive and use gifts and donations for carrying out the purposes of this chapter. No person may receive payment for solicitation of any funds. (Educ.Code, Sec. 30.46.)

**Sec. 111.057. Unlawful Use of Lists of Names**

Except for purposes directly connected with the administration of the rehabilitation program and in accordance with regulations, it is unlawful for a person to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, names of, or any information directly or indirectly derived from records concerning persons applying for or receiving rehabilitation. (Educ. Code, Sec. 30.47.)

[Sections 111.058–111.080 reserved for expansion]

**SUBCHAPTER D. EXTENDED REHABILITATION SERVICES**

**Sec. 111.081. Authority**

The commission may plan, institute, support, and maintain programs of extended rehabilitation, including extended employment in a sheltered workshop and extended community residence. (Educ.Code, Sec. 30.72.)

**Sec. 111.082. Administration**

The commission may contract with any nonprofit agency, public or private, for the provision of any extended rehabilitation services, including extended sheltered workshop employment or extended community residence for persons participating in vocational rehabilitation, and pay for the services purchased for the state. (Educ.Code, Sec. 30.73.)

**Sec. 111.083. Participant Contributions**

A handicapped person in vocational rehabilitation and living in an extended community residence facility operated by a nonprofit agency that has a contract under this subchapter shall contribute to the agency a portion of his or her personal earnings, if any. The commission by rule shall determine the portion of the person's earnings that must be contributed, after deductions for personal use. The earnings contributions made under this section must be credited to the state in arriving at the net sums due to the agency contracting with the state to furnish services. (Educ.Code, Sec. 30.74.)

**Sec. 111.084. Standards**

The commission shall establish standards of staffing, physical plant, and services required for the operation of facilities of nonprofit agencies furnishing services under this subchapter by contract with the state. A contract entered into by the state under this subchapter is subject to cancellation by the state for cause at any time by the issuance of written notice of cancellation by the state to the contracting agency at least 30 days in advance of the date of cancellation. (Educ.Code, Sec. 30.75.)

**Sec. 111.085. Quarterly Payments**

From funds available for the purpose, the commission shall pay a nonprofit agency on a quarterly basis an amount equal to not less than:

(1) \$3 for each six-hour working day for each client in a sheltered workshop; and

(2) \$85 per month for each client in an extended community residence. (Educ.Code, Sec. 30.76.)

**Sec. 111.086. Funds; Rules**

The commission may receive and expend funds from any source, public or private, for the purposes set forth in this subchapter, and shall establish rules for the conduct and control of the programs authorized by this

subchapter. A nonprofit agency operating an extended community residence facility under this subchapter shall file annually its budget showing salaries paid and expenditures with the office of the state auditor. (Educ.Code, Sec. 30.77.)

## TITLE 8. RIGHTS AND RESPONSIBILITIES OF THE HANDICAPPED

### CHAPTER 121. PARTICIPATION IN SOCIAL AND ECONOMIC ACTIVITIES

#### Section

- 121.001. State Policy.
- 121.002. Definitions.
- 121.003. Discrimination Prohibited.
- 121.004. Penalties for and Damages Resulting from Discrimination.
- 121.005. Responsibilities of Handicapped Persons.
- 121.006. Penalties for Improper Use of Dog Guides.
- 121.007. Blind and Incapacitated Pedestrians.
- 121.008. Dissemination of Information Relating to the Handicapped.
- 121.009. Construction of Chapter.

#### Sec. 121.001. State Policy

The policy of the state is to encourage and enable physically handicapped persons to participate fully in the social and economic life of the state, to achieve maximum personal independence, to become gainfully employed, and to otherwise fully enjoy and use all public facilities available within the state. (V.A.C.S. Art. 4419e, Sec. 1.)

#### Sec. 121.002. Definitions

In this chapter:

- (1) "White cane" means a cane or walking stick which is metallic or white in color or white tipped with some contrasting color, and which is carried by a blind person to assist the blind person in traveling from place to place.
- (2) "Dog guide" means a dog that:
  - (A) is fitted with a special harness so as to be suitable as an aid to the mobility of a blind person;
  - (B) is used by a blind person who has satisfactorily completed a specific course of training in the use of a dog as an aid to personal travel; and
  - (C) has been trained by an organization generally recognized by agencies involved in the rehabilitation of the blind as reputable and competent to provide dogs with training of this type.
- (3) "Public facilities" includes streets, highways, sidewalks, walkways, all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation, hotels, motels, or other places of lodging, public buildings maintained by any unit or subdivision of government, buildings to which the general public is invited, college dormitories and other educational facilities, restaurants or other places where food is offered for sale to the public, and all other places of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited.

(4) "Handicapped person" means a person who has a mental or physical handicap, including mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, being crippled, or any other health impairment which requires special ambulatory devices or services.

(5) "Housing accommodations" means all or part of real property which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings, except a single family residence whose occupants rent, lease, or furnish for compensation only one room. (V.A. C.S. Art. 4419c, Sec. 2.)

**Sec. 121.003. Discrimination Prohibited**

(a) Subject only to limitations and conditions established by law and applicable alike to all persons, persons who are physically handicapped have the same right as the able-bodied to the full use and enjoyment of any public facility in the state.

(b) No common carrier, airplane, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation operating within the state may refuse to accept as a passenger a person who is physically handicapped solely because of the person's handicap, nor may a handicapped person be required to pay an additional fare because of his or her use of a dog guide, wheelchair, crutches, or other device used to assist the handicapped person in travel.

(c) No person who is physically handicapped may be denied admittance to any public facility in the state because of the handicapped person's use of a white cane, dog guide, wheelchair, crutches, or other device of assistance in mobility, or because the person is handicapped.

(d) The discrimination prohibited by this section includes discrimination through an open and obvious refusal to allow a handicapped person to use or be admitted to any public facility, as well as discrimination based on a ruse or subterfuge calculated to prevent or discourage a handicapped person from using or being admitted to a public facility. Regulations relating to the use of public facilities by any designated class of persons from the general public may not prohibit the use of particular public facilities by handicapped persons who, except for their handicaps or use of dog guides or other devices for assistance in travel, would fall within the designated class. Lists containing the names of persons who desire to use particular public facilities may not be composed or manipulated so as to deny a handicapped person a fair and equal opportunity to use or be admitted to any public facility.

(e) This section does not limit the right of the owner or manager of a public facility to refuse to admit, to refuse to serve, or to evict from a public facility a person who is so unkempt as to be clearly offensive to others using the public facility, who is obviously intoxicated, or who conducts himself in a belligerent, boisterous, profane, or other offensive manner which unreasonably interferes with the right of other persons to use and enjoy the public facility.

(f) An employer who conducts business in this state may not discriminate in his or her employment practices against a handicapped person on the basis of the handicap if the person's ability to perform the task required by a job is not impaired by the handicap and the person is otherwise qualified for the job.

(g) It is the policy of the state that the blind, the visually handicapped and the otherwise physically disabled be employed by the state, by political subdivisions of the state, in the public schools, and in all other

employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

(h) The blind, the visually handicapped, and the otherwise physically disabled shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(i) Nothing in this section shall require any person renting, leasing, or providing for compensation real property to modify his or her property in any way or provide a higher degree of care for a blind person, visually handicapped person, or otherwise physically disabled person than for a person who is not physically disabled.

(j) A totally or partially blind person who has a guide dog, or who obtains a guide dog, is entitled to full and equal access to all housing accommodations provided for in this section, and may not be required to pay extra compensation for the guide dog but is liable for any damage done to the premises by the guide dog. (V.A.C.S. Art. 4419e, Sec. 3.)

**Sec. 121.004. Penalties for and Damages Resulting from Discrimination**

(a) A person, firm, association, corporation, or other organization, or the agent of a person, firm, association, corporation, or other organization who violates Section 121.003 of this chapter is guilty of a misdemeanor and on conviction shall be punished by a fine of not less than \$100 nor more than \$300.

(b) In addition to the penalty provided in Subsection (a) of this section, a person, firm, association, corporation, or other organization, or the agent of a person, firm, association, corporation, or other organization who violates the provisions of Section 121.003 of this chapter is deemed to have deprived a handicapped person of his or her civil liberties. The handicapped person deprived of his or her civil liberties may maintain a cause of action for damages in a court of competent jurisdiction, and there is a conclusive presumption of damages in the amount of at least \$100 to the handicapped person. (V.A.C.S. Art. 4419e, Sec. 6.)

**Sec. 121.005. Responsibilities of Handicapped Persons**

(a) A blind person who uses a dog guide for assistance in travel is liable for any damages done to the premises of facilities by the dog.

(b) A blind person who uses a dog guide for assistance in travel shall keep the dog guide properly harnessed, and a person who is injured by the dog guide because of a blind person's failure to properly harness the dog guide is entitled to maintain a cause of action for damages in a court of competent jurisdiction under the same law applicable to other causes brought for the redress of injuries caused by animals.

(c) A physically handicapped person who, after being duly warned of a danger unique to a handicapped person's use of a particular public facility, is injured in using the facility because of a danger of the type about which warning was given, is deemed to have assumed the risk of using the public facility. (V.A.C.S. Art. 4419e, Sec. 4.)

**Sec. 121.006. Penalties for Improper Use of Dog Guides**

(a) A person who fits a dog with a harness of the type commonly used by blind persons who use dog guides for purposes of travel, in order to represent that his or her dog is a specially trained dog guide when training of the type described in Section 121.002(2)(C) of this chapter has not in fact been provided, is guilty of a misdemeanor and on conviction shall be punished by a fine of not more than \$200.

(b) A person who habitually abuses or neglects to feed or otherwise neglects to properly care for his or her dog guide is not entitled to the benefits of this chapter available to those who use dog guides, and must surrender the dog guide on demand to the person or organization furnishing the dog or to other competent authorities. (V.A.C.S. Art. 4419e, Sec. 5.)

**Sec. 121.007. Blind and Incapacitated Pedestrians**

(a) No person may carry a white cane on a public street or highway unless the person is totally or partially blind or otherwise incapacitated.

(b) The driver of a vehicle approaching an intersection or crosswalk where a pedestrian guided by a guide dog or carrying a white cane is crossing or attempting to cross shall take necessary precautions to avoid injuring or endangering the pedestrian. The driver shall bring the vehicle to a full stop if injury or danger can be avoided only by that action.

(c) The failure of a totally or partially blind or otherwise incapacitated person to carry a white cane or be guided by a guide dog does not deprive the person of the rights and privileges conferred by law on pedestrians crossing streets or highways and does not constitute evidence of contributory negligence.

(d) A person who violates this section commits a Class C misdemeanor. (V.A.C.S. Art. 6701e.)

**Sec. 121.008. Dissemination of Information Relating to the Handicapped**

(a) To ensure maximum public awareness of the policies set forth in this chapter, the governor may issue a proclamation each year taking suitable public notice of October 15 as White Cane Safety Day. The proclamation must contain appropriate comment about the significance of various devices used by handicapped persons to assist them in traveling, and must call to the attention of the public the provisions of this chapter and of other laws relating to the safety and well-being of this state's handicapped citizens.

(b) State agencies regularly mailing forms or information to significant numbers of public facilities operating within the state shall cooperate with state agencies responsible for the rehabilitation of the handicapped by sending information about this chapter to those to whom regular mailings are sent. The information, which must be sent only on the request of state agencies responsible for the rehabilitation of the handicapped and not more than once each year, may be included in regular mailings or sent separately. If sent separately, the cost of mailing is borne by the state rehabilitation agency or agencies requesting the mailing and, regardless of whether sent separately or as part of a regular mailing, the cost of preparing information about this chapter is borne by the state rehabilitation agency or agencies requesting distribution of this information. (V.A.C.S. Art. 4419e, Sec. 7.)

**Sec. 121.009. Construction of Chapter**

The provisions of this chapter must be construed in a manner compatible with other state laws relating to the handicapped. (V.A.C.S. Art. 4419e, Sec. 8.)



## HUMAN RESOURCES CODE

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### Sec. 2. Repealer. The following laws are repealed:

#### (1) V.A.C.S. Art. 46b—2

664—5  
678d—1  
695a  
695a—1  
695a—2  
695a—3  
695a—4  
695a—5  
695c  
695c—1  
695c—3  
695f  
695j  
695j—1  
695k  
3207a  
3207b  
3207c  
3207d  
4413(42)  
4413(43)  
4413(202)  
4419e  
5138  
5143d  
5143f  
5446b  
6701e

#### (2) Education Code Sec. 30.01

30.02  
30.11  
30.111  
30.12  
30.13  
30.14  
30.15  
30.16  
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**(2) Education Code Sec. 30.49**

**30.71**

**30.72**

**30.73**

**30.74**

**30.75**

**30.76**

**30.77**

**Sec. 3.<sup>45</sup> Legislative Intent.** This Act is intended as a recodification only, and no substantive change in the law is intended by this Act.

**Sec. 4.<sup>45</sup> Effective Date.** This Act takes effect September 1, 1979.

**ARTICLE 2**

**Section 1.** Section 46.003, Human Resources Code, is amended <sup>46</sup> to read as follows:

**Sec. 46.003. Assignment of Right to Support**

(a) The filing of an application for or the receipt of financial assistance under Chapter 31 of this code constitutes an assignment to the department of any rights to support from any other person which the applicant or recipient may have in his or her own behalf or for a child for whom the applicant or recipient is claiming assistance, including the right to the amount accrued at the time the application is filed or the assistance is received. An applicant's assignment under this section is valid only if the department approves the application. The department may distribute support payments or parts of payments received by it to the family for whom the payments are made or may use the payments to provide assistance and services to and on behalf of needy dependent children.

(b) Child support payments for the benefit of a recipient child shall be made to the department. If a court has ordered support payments to be made to an applicant for or recipient of financial assistance, the department may file notice of the assignment with the court ordering the payments. The notice must include:

(1) a statement that the child is an applicant for or recipient of financial assistance;

(2) the name of the child and the caretaker for whom support has been ordered by the court;

(3) the style and cause number of the case in which support was ordered; and

(4) a request that the payments ordered be made to the department.

(c) On receipt of the notice and without a requirement of a hearing, the court shall order that the payments be made to the department. (V. A.C.S. Art. 695c, Secs. 18-B(c) and (d); Sec. 1, H.B. No. 468, 66th Legis., Reg.Sess., 1979.)

**Sec. 2.** Section 101.024, Human Resources Code, is amended <sup>47</sup> to read as follows:

<sup>45</sup> Prec. V.T.C.A. Human Resources Code, § 1.001 note.      <sup>47</sup> V.T.C.A. Human Resources Code, § 101.024.

<sup>46</sup> V.T.C.A. Human Resources Code, § 46.003.

**Sec. 101.024. Voluntary Community Services Programs**

(a) The committee shall disburse state funds appropriated for the purpose to local public agencies or private, nonprofit corporations that operate programs to recruit retired persons to perform volunteer community services or that operate Foster Grandparent Programs.

(b) A public agency or private, nonprofit corporation may not receive state money under this section if it is not able to qualify for federal matching money for the same purpose.

(c) The committee by rules shall establish guidelines or formulas to determine the proportion of state money distributed to each public agency or private, nonprofit corporation. The committee by rules may establish additional qualifications to receive the state money.

(d) State funds disbursed under this section may not be used to pay compensation to volunteer workers, except for participants in the Foster Grandparent Programs, or for purposes other than financing the operation or administration of the volunteer programs, but it may be used to defray expenses incurred by volunteers in the performance of volunteer work. The committee by rules may further limit the purposes for which the state money may be spent. (V.A.C.S. Art. 695k, Sec. 6a; Sec. 1, S.B. No. 1269, 66th Legis., Reg.Sess., 1979.)

Sec. 3. Chapter 81, Human Resources Code, is amended <sup>48</sup> to read as follows:

**CHAPTER 81. TEXAS COMMISSION FOR THE DEAF****Section**

81.001. Definition.

81.002. Texas Commission for the Deaf.

81.003. Terms.

81.004. Application of Sunset Act.

81.005. Chairman; Meetings; Expenses.

81.006. Duties and Powers.

81.007. Board for Evaluation of Interpreters.

81.008. Executive Director.

81.009. Employees.

81.010. Technical Advisory Council for Planning and Operations.

**Sec. 81.001. Definition**

In this chapter, "Commission" means the Texas Commission for the Deaf. (Sec. 1, S.B. No. 1157, 66th Legis., Reg.Sess., 1979.)

**Sec. 81.002. Texas Commission for the Deaf**

(a) The Texas Commission for the Deaf is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) Three members of the commission must be deaf persons, two must be parents of deaf persons, two must be professionals serving the deaf, and two must be persons from the general public. (Sec. 2, S.B. No. 1157, 66th Legis., Reg.Sess., 1979.)

**Sec. 81.003. Terms**

Members hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. (Sec. 3, S.B. No. 1157, 66th Legis., Reg.Sess., 1979.)

**Sec. 81.004. Application of Sunset Act**

The Texas Commission for the Deaf is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless

48. V.T.C.A. Human Resources Code,

§§ 81.001 to 81.010

the commission is continued in existence as provided by that Act, the commission is abolished and this chapter expires effective September 1, 1985. (Sec. 4, S.B. No. 1157, 66th Legis., Reg.Sess., 1979.)

**Sec. 81.005. Chairman; Meetings; Expenses**

(a) The commission shall elect a chairman from among its members. The chairman serves for a term of one year.

(b) The commission shall hold at least six meetings a year.

(c) Five members of the commission constitute a quorum for the transaction of business.

(d) Members of the commission are entitled to reimbursement for their actual and necessary expenses in attending meetings of the commission and in carrying out official duties. (Sec. 5, S.B. No. 1157, 66th Legis., Reg.Sess., 1979.)

**Sec. 81.006. Duties and Powers**

(a) The commission shall:

(1) develop and implement a statewide program to ensure continuity of services to the deaf;

(2) provide direct services to the deaf that have not been previously designated by legislation as the responsibility of other agencies;

(3) work to ensure more effective coordination and cooperation among public and nonprofit organizations providing social and educational services to deaf individuals;

(4) establish a registry of available interpreters for the deaf and a catalogue of resources available for the needs of the deaf, both of which it shall disseminate to interested people and update annually; and

(5) help initiate interpreter training programs in institutions of higher learning, develop guidelines for instruction to promote uniformity of signs taught within these programs, and with the assistance of the Central Education Agency develop standards for evaluation of these programs.

(b) The commission may:

(1) appoint one or more advisory committees to consult with and advise the commission and may reimburse the members of an advisory committee for the actual and necessary expenses incurred in performing duties requested by the commission;

(2) accept gifts, grants, and donations of money, personal property, or real property for use in expanding and improving services to deaf persons of this state; and

(3) adopt rules necessary to implement this chapter. (Sec. 6, S. B. No. 1157, 66th Legis., Reg.Sess., 1979.)

**Sec. 81.007. Board for Evaluation of Interpreters**

(a) The commission may establish a program in accordance with this section for the certification of interpreters who have reached varying levels of proficiency in manual communication skills.

(b) The commission shall appoint a board of three persons to administer the certification program.

(c) Subject to approval of the commission, the board shall prescribe qualifications for each of several levels of certification based on proficiency and shall evaluate and certify interpreters using these qualifications.

(d) The commission shall use the recommendations of the board in compiling a statewide registry of interpreters by skill level.

(e) The commission may charge a reasonable fee for the administration of an examination or other requirements for certification of an applicant. (Sec. 7, S.B. No. 1157, 66th Legis., Reg.Sess., 1979.)

**Sec. 81.008. Executive Director**

(a) The commission shall appoint an executive director.

(b) In selecting an executive director, the commission shall give preference to a deaf or hard of hearing person.

(c) The executive director is responsible for carrying out policies established by the commission. The commission may not delegate responsibility for establishing policy of the agency to the executive director. (Sec. 8, S.B. No. 1157, 66th Legis., Reg.Sess., 1979.)

**Sec. 81.009. Employees**

The commission may hire employees it considers necessary to carry out the purposes of this chapter. (Sec. 8,<sup>48</sup> S.B. No. 1157, 66th Legis., Reg.Sess., 1979.)

**Sec. 81.010. Technical Advisory Council for Planning and Operations**

(a) The Technical Advisory Council for Planning and Operations is established. The commissioner of education, the commissioner of public welfare, the commissioner of mental health and mental retardation, the commissioner of the Texas Rehabilitation Commission, the superintendent of the Texas School for the Deaf, the executive director of the State Commission for the Blind, and the commissioner of health, or a designee of each, shall serve as ex officio members of the council. In addition, the executive director of the Texas Commission for the Deaf shall appoint a member of the faculty of a college or university who specializes in the area of training for the deaf, and shall appoint two representatives of nonprofit organizations which provide services for the deaf to serve on the council.

(b) The members of the council appointed by the executive director of the Texas Commission for the Deaf shall serve for terms of two years. They shall receive no compensation but are entitled to be reimbursed for actual and necessary expenses incurred in performing their official duties.

(c) The executive director of the Texas Commission for the Deaf may appoint representatives of other public or private agencies to serve as advisors to the council and may authorize the reimbursement of their actual and necessary expenses incurred in performing their official duties.

(d) The council serves as an interagency planning council for the coordination of services to the deaf. The council shall assist the executive director of the Texas Commission for the Deaf and the commission in resolving the differences that arise among state-supported organizations responsible for direct extension of services to deaf individuals and in determining which agency is responsible for serving a multiply handicapped deaf child. (Sec. 11, S.B. No. 1157, 66th Legis., Reg.Sess., 1979.)

Sec. 4. Chapter 41, Human Resources Code, is amended as follows:

(1) <sup>49</sup> Insert "SUBCHAPTER A. GENERAL WELFARE SERVICES" immediately following "CHAPTER 41. CHILD WELFARE SERVICES".

<sup>48a.</sup> So in enrolled bill: probably should read "Sec. 9".

<sup>49.</sup> V.T.C.A. Human Resources Code, Ch 41, subch. A, head.

(2) <sup>50</sup> Add the following at the end of Chapter 41:

#### SUBCHAPTER B. FOSTER CARE

##### Sec. 41.021. Foster Care Payments

(a) The department may pay the cost of protective foster care for children:

(1) for whom the department has initiated a suit and has been named managing conservator by a court order issued under Article 15.02, Family Code, as amended; and

(2) who are ineligible for foster care payments under the department's aid to families with dependent children program.

(b) The department may not pay the cost of protective foster care for a child for whom the department has been named managing conservator by a court order issued solely under Article 15.02(1)(J), Family Code, as amended.

(c) Payments for protective foster care, including medical care, must be equal to payments made for similar care for a child who is eligible for the department's aid to families with dependent children program. (Sec. 1, S.B. No. 139, 66th Legis., Reg.Sess., 1979.)

##### Sec. 41.022. County Contracts

(a) The department may contract with a county commissioners court to administer the funds authorized by this subchapter for eligible children in the county and may require county participation.

(b) The payments provided by this subchapter do not abrogate the responsibility of a county to provide child welfare services. (Sec. 2, S.B. No. 139, 66th Legis., Reg.Sess., 1979.)

##### Sec. 41.023. Direct Payments

The department may make direct payments for foster care to foster parents residing in a county with which the department does not have a contract authorized by Sec. 41.022 of this code. (Sec. 3, S.B. No. 139, 66th Legis., Reg.Sess., 1979.)

##### Sec. 41.024. Parent or Guardian Liability

The parent or guardian of a child is liable to the state or to the county for any payment made by the state or county for foster care of a child under this subchapter. The funds collected by the state under this section must be used by the department for child welfare services. (Sec. 4, S.B. No. 139, 66th Legis., Reg.Sess., 1979.)

##### Sec. 41.025. Medical Services Limitation

The department may not provide the medical care payments authorized by Section 41.021(c) of this code if:

(1) a federal law or regulation prohibits those medical payments unless medical payments are also provided for medically needy children who are not eligible for the department's aid to families with dependent children program and for whom the department is not named managing conservator; or

(2) the federal government does not fund at least 50 percent of the cost of the medical payments authorized by this subchapter. (Sec. 5, S.B. No. 139, 66th Legis., Reg.Sess., 1979.)

Sec. 5.<sup>51</sup> Chapter 46, Human Resources Code, is amended by adding Section 46.007 to read as follows:

##### Sec. 46.007. Attorneys Representing Department

Attorneys employed by the department may represent the department in a suit to collect child support or determine paternity brought under

50. V.T.C.A. Human Resources Code. 51. V.T.C.A. Human Resources Code, §§ 41.021 to 41.025. § 46.007.

the authority of federal law and this chapter. At the request of the department, the attorney general may represent the department in an appeal of a suit brought under the authority of this chapter. This section does not limit the authority of the attorney general to represent the state in a proceeding. (V.A.C.S. Art. 695c, Sec. 18-B(i), as added by H.B. No. 1831, 66th Legis., Reg.Sess., 1979.)

Sec. 6. Section 33.011, Human Resources Code, is amended<sup>52</sup> to read as follows:

**Sec. 33.011. Prohibited Activities; Penalties**

(a) A person commits an offense if the person knowingly uses, alters, or transfers food stamp coupons or authorizations to participate in the food stamp program in any manner not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the coupons or authorization cards is less than \$200 and a felony of the third degree if the value of the coupons or authorization cards is \$200 or more.

(b) A person commits an offense if the person knowingly possesses food stamp coupons or authorizations to participate in the food stamp program when not authorized by law to possess them, knowingly redeems food stamp coupons when not authorized by law to redeem them, or knowingly redeems food stamp coupons for purposes not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the coupons or authorization cards is less than \$200 and a felony of the third degree if the value of the coupons or cards is \$200 or more.

(c) A person commits an offense if the person knowingly possesses blank authorizations to participate in the food stamp program when not authorized by law to possess them. An offense under this subsection is a felony of the third degree.

(d) When food stamp coupons or authorizations to participate in the food stamp program of various values are obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the values aggregated in determining the grade of the offense.

(e) The department may contract with county commissioners courts to provide funds to pay for professional and support services necessary for the enforcement of any criminal offense that involves illegally obtaining, possessing, or misusing food stamps. (V.A.C.S. Art. 695c, Sec. 7-B; Sec. 1, S.B. No. 1150, 66th Legis., Reg.Sess., 1979.)

Sec. 7. Chapter 111, Human Resources Code, is amended<sup>53</sup> by adding Section 111.058 to read as follows:

**Sec. 111.058. Criminal History Record Information**

The commission may obtain criminal history record information from the Board of Pardons and Paroles, Texas Department of Corrections, and the Texas Department of Public Safety if the records relate to an applicant for rehabilitation services or to a client of the agency. The Board of Pardons and Paroles, Texas Department of Corrections, and the Texas Department of Public Safety upon request shall supply the commission criminal history record information applying to applicants for rehabilitation services or clients of the commission. The commission shall treat all criminal history record information as privileged and confidential and for commission use only. (Sec. 1, S.B. No. 1255, 66th Legis., Reg.Sess., 1979.)

52. V.T.C.A. Human Resources Code, § 33.011. 53. V.T.C.A. Human Resources Code, § 111.058.

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**Sec. 8.** Section 47.004, Human Resources Code, is amended <sup>54</sup> to read as follows:

**Sec. 47.004. Financial Assistance**

(a) Adoption fees for a hard-to-place child may be waived.

(b) The adoption of a hard-to-place child may be subsidized by an amount not exceeding the amount that would be paid for foster home care for the child if not adopted. The need for the subsidy shall be determined by the department under its rules.

(c) The county may pay the subsidy if the county is responsible for the child's foster home care at the time of the adoption. The state shall pay the subsidy if at the time of the adoption the child is receiving aid under the department's aid to families with dependent children program, and the state may pay the subsidy if the department is managing conservator for the child. (V.A.C.S. Art. 46b—2, Secs. 4 (part) and 5; Secs. 1 and 2, S.B. No. 196, 66th Legis., Reg.Sess., 1979.)

**Sec. 9.** Chapter 61, Human Resources Code, is amended by adding <sup>55</sup> Section 61.047 to read as follows:

**Sec. 61.047. Contract With Big Brothers/Big Sisters of America**

(a) The council may execute contracts with Big Brothers/Big Sisters of America or its successor organization under which the council agrees to disburse money to the local affiliates in this state of Big Brothers/Big Sisters of America or its successor organization, and Big Brothers/Big Sisters of America or its successor organization agrees to:

(1) pair adult volunteers with children who are between the ages of 6 and 18 to engage in activities in which relationships based on friendship can develop between them;

(2) monitor the relationships between the paired adults and children to determine if meaningful relationships are developing between them that are beneficial to the children; and

(3) plan and implement other programs beneficial to the character development of the children served.

(b) Before December 31 of each even-numbered year, the council shall review and present to the legislature an evaluation of the activities for which the money disbursed under Subsection (a) of this section is used. (Sec. 1, S.B. No. 1167, 66th Legis., Reg.Sess., 1979.)

**Sec. 10.** Section 32.033, Human Resources Code, is amended <sup>56</sup> to read as follows:

**Sec. 32.033. Subrogation**

(a) The filing of an application for or receipt of medical assistance constitutes an assignment of the applicant's or recipient's right of recovery from:

(1) personal insurance;

(2) other sources; or

(3) another person for personal injury caused by the other person's negligence or wrong.

(b) A person who applies for or receives medical assistance shall inform the department, at the time of application or at any time during eligibility and receipt of services, of any unsettled tort claim which may affect medical needs and of any private accident or sickness insurance coverage that is or may become available. A recipient shall inform the de-

54. V.T.C.A. Human Resources Code, § 47.004.

55. V.T.C.A. Human Resources Code, § 61.047.

56. V.T.C.A. Human Resources Code, § 32.033.



partment of any injury requiring medical attention that is caused by the act or failure to act of some other person. An applicant or a recipient shall inform the department as required by this subsection within 60 days of the date the person learns of his or her insurance coverage, tort claim, or potential cause of action. An applicant or a recipient who knowingly and intentionally fails to disclose the information required by this subsection commits a Class C misdemeanor.

(c) A claim for damages for personal injury does not constitute grounds for denying or discontinuing assistance under this chapter.

(d) A separate and distinct cause of action in favor of the state is hereby created, and the department may, without written consent, take direct civil action in any court of competent jurisdiction. A suit brought under this section need not be ancillary to or dependent upon any other action.

(e) The department's right of recovery is limited to the amount of the cost of medical care services paid by the department. Other subrogation rights granted under this section are limited to the cost of the services provided.

(f) The commissioner may waive the department's right of recovery in whole or in part when the commissioner finds that enforcement would tend to defeat the purpose of public assistance.

(g) The department may designate an agent to collect funds the department has a right to recover from third parties under this section. The department shall use any funds collected to pay costs of administering the medical assistance program.

(h) The department may adopt rules for the enforcement of its right of recovery. (V.A.C.S. Art. 695j—1, Secs. 3 (part) and 11; Secs. 1 and 2, H.B. No. 1812, 66th Legis., Reg.Sess., 1979.)

Sec. 11. Sections 91.011(a), (e), and (f), Human Resources Code, are amended <sup>57</sup> to read as follows:

(a) The State Commission for the Blind is composed of nine members appointed by the governor with the consent of the senate. Two members must be reputable blind citizens of the state and the remaining members must be outstanding citizens of the state.

(e) The governor shall designate a member of the commission to serve as presiding officer, and the officer shall serve at the governor's pleasure.

(f) Five members of the commission constitute a quorum for the transaction of business. (V.A.C.S. Art. 3207a, Sec. 1; Art. 3207b (part); Sec. 1, S.B. No. 1243, 66th Legis., Reg.Sess., 1979.)

Sec. 12. Section 91.021, Human Resources Code, is amended by adding <sup>58</sup> Subsection (f) to read as follows:

(f) The commission shall:

(1) provide advocacy and ombudsmanship services for visually handicapped citizens of the state;

(2) serve as an information center and referral resource for the visually handicapped;

(3) develop mechanisms and procedures that tend to assist visually handicapped individuals in bridging gaps between educational, institutional, rehabilitative, vocational, and related types of services operated by public and private nonprofit organizations throughout the state; and

57. V.T.C.A. Human Resources Code, § 91.011(a), (e), (f)

58. V.T.C.A. Human Resources Code, § 91.021, subsec. (f).

(4) generally supervise, oversee, and assure the effective management and operation of a state program of purchasing goods and services manufactured by handicapped individuals according to the requirements of law and in nonprofit sheltered workshop facilities. (Sec. 2, S.B. No. 1243, 66th Legis., Reg.Sess., 1979.)

Sec. 13. Sections 93.002(a) and (b), Human Resources Code, are amended<sup>59</sup> to read as follows:

(a) The Texas Committee on Purchases of Blind-made Products and Services is composed of the following members who are appointed by the governor:

(1) a private citizen conversant with the problems incidental to the employment of the blind;

(2) a representative of a sheltered workshop for the blind organized under state law;

(3) a representative of a sheltered workshop organized under state law to serve disability groups other than the blind;

(4) a representative of a volunteer organization operated primarily to serve a disability group or groups other than the blind;

(5) a representative of the department of a state-supported institution of higher education offering an advanced degree in vocational rehabilitation counseling;

(6) a representative of the department of the Central Education Agency concerned with vocational education or with special education;

(7) a representative of the State Board of Control;

(8) a representative of the State Commission for the Blind; and

(9) a representative of the Texas Department of Mental Health and Mental Retardation.

(b) Lay members of the committee serve for terms of two years expiring on January 31 of odd-numbered years. Members receive no compensation but are entitled to reimbursement by the State Commission for the Blind for expenses actually incurred in the performance of their duties. (R.S. Art. 664—5, Sec. 2; Sec. 3, S.B. No. 1243, 66th Legis., Reg.Sess., 1979.)

Sec. 14. Section 93.010, Human Resources Code, is amended<sup>60</sup> to read as follows:

#### Sec. 93.010. Rules

After consulting with the committee and reviewing the committee's recommendations, the State Commission for the Blind may make rules necessary to implement and administer this chapter. (R.S. Art. 664—5, Sec. 10; Sec. 3, S.B. No. 1243, 66th Legis., Reg.Sess., 1979.)

Sec. 15. Subchapter D, Chapter 92, Human Resources Code, is transferred to Chapter 91, Human Resources Code, renumbered, and amended<sup>61</sup> to read as follows:

### SUBCHAPTER E. CENTRAL MEDIA DEPOSITORY

#### Sec. 91.081. Purpose

(a) The purpose of this subchapter is to establish a comprehensive central state depository for braille, large print, slow speed records and machines, tape recordings and tape players, and related forms of media that will enable the Texas State Library, the Central Education Agency,

59. V.T.C.A. Human Resources Code, § 93.002(a), (b). 61. V.T.C.A. Human Resources Code, §§ 91.081 to 91.084.

60. V.T.C.A. Human Resources Code, § 93.010.

the State Commission for the Blind, volunteer organizations involved in the production of braille or recorded materials for the blind, the Library of Congress, and related types of organizations to work together more closely and effectively.

(b) It is the intent of this subchapter to allow various agencies and organizations interested in or responsible for such services to work together cooperatively in one facility without requiring one central management. (R.S. Art. 5446b, Sec. 1; Sec. 4, S.B. No. 1243, 66th Legis., Reg.Sess., 1979.)

**Sec. 91.082. Establishment of Central Media Depository**

(a) The Texas State Library and Archives Commission shall generally supervise the establishment and operation of a central media depository in Austin to house materials and devices required by blind and visually handicapped individuals or by other individuals who are unable to use ordinary printed materials.

(b) With the approval of the library and archives commission, the agencies and organizations maintaining and operating the central media depository shall develop and periodically evaluate and modify specific arrangements for administrative support, sharing of staff and equipment, and related matters involved in the operation of the program. (R.S. Art. 5446b, Secs. 2 and 3; Sec. 4, S.B. No. 1243, 66th Legis., Reg.Sess., 1979; H.B. No. 1429, 66th Legis., Reg.Sess., 1979.)

**Sec. 91.083. Ancillary Services**

The library and archives commission shall allow the central media depository to be used for the repair of special media and equipment required by individuals who are unable to use ordinary print and for research and demonstration, training, and the production of materials in special media by volunteer organizations. (R.S. Art. 5446b, Sec. 4; Sec. 4, S.B. No. 1243, 66th Legis., Reg.Sess., 1979; H.B. No. 1429, 66th Legis., Reg.Sess., 1979.)

**Sec. 91.084. Funding**

The cost of establishing and operating the central media depository shall be paid with:

- (1) funds appropriated by the legislature for that purpose;
- (2) gifts, grants, bequests, and donations received by cooperating agencies for the establishment and support of the depository;
- (3) reasonable fees customarily charged for services by the agencies and organizations using or occupying the facility; and
- (4) funds budgeted by the cooperating agencies and organizations for that purpose pursuant to interagency contracts and agreements. (R.S. Art. 5446b, Sec. 5.)

Sec. 16. Subchapters A, B, C, and E, Chapter 92, Human Resources Code, are repealed.<sup>62</sup> (Sec. 8, S.B. No. 1243, 66th Legis., Reg.Sess., 1979.)

Sec. 17. Section 93.002, Human Resources Code, is amended<sup>63</sup> to read as follows:

**Sec. 93.002. Texas Committee on Purchases of Blind-made Products and Services**

(a) The Texas Committee on Purchases of Blind-made Products and Services is composed of the following members who are appointed by the governor with the advice and consent of the senate:

- (1) a private citizen conversant with the problems incidental to the employment of the blind;

62. V.T.C.A. Human Resources Code, 63. V.T.C.A. Human Resources Code, §§ 92.001, 92.002, 92.011 to 92.013, 92.021 § 93.002 to 92.023, 92.081 to 92.085, repealed

(2) a representative of a sheltered workshop for the blind organized under state law;

(3) a representative of a sheltered workshop organized under state law to serve disability groups other than the blind;

(4) a representative of a volunteer organization operated primarily to serve a disability group or groups other than the blind;

(5) a representative of the department of a state-supported institution of higher education offering an advanced degree in vocational rehabilitation counseling;

(6) a representative of the Texas Rehabilitation Commission;

(7) a representative of the State Board of Control;

(8) a representative of the State Commission for the blind;

(9) a representative of the Texas Department of Mental Health and Mental Retardation;

(10) a representative of private business who is knowledgeable in the activities and processes involved in the sale of goods or services to governmental entities; and

(11) a representative of a state agency or department purchasing goods or services under this section but not involved in the daily operation of the program authorized by this Chapter.

(b) Lay members of the committee served for terms of two years expiring on January 31 of odd-numbered years. Members receive no compensation but are entitled to reimbursement by the State Commission for the Blind for expenses actually incurred in the performance of their duties.

(c) The governor shall select one of the committee members to serve as chairman.

(d) A member who is unable to attend a meeting of the committee may designate a person from his or her agency or department to represent him or her at the meeting. (R.S. Art. 664—5, Sec. 2; Sec. 1, H.B. No. 2071, 66th Legis., Reg.Sess., 1979.)

Sec. 18. Section 93.003, Human Resources Code, is amended<sup>64</sup> to read as follows:

**Sec. 93.003. Application of Sunset Act**

The Texas Committee on Purchases of Blind-made Products and Services is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the committee is abolished and this chapter expires effective September 1, 1983. (R.S. Art. 664—5, Sec. 2a; Sec. 2, H.B. No. 2071, 66th Legis., Reg.Sess., 1979.)

Sec. 19. Section 93.004, Human Resources Code, is amended<sup>65</sup> to read as follows:

**Sec. 93.004. Fair Market Price; Purchasing Procedures**

(a) The committee shall determine the fair market price of all products and services manufactured or provided by the blind and offered for sale to the various agencies and departments of the state and its political subdivisions by a nonprofit agency for the blind organized under state law and recognized by the State Commission for the Blind as capable of contributing to the purposes of this chapter.

(b) The committee shall revise the prices periodically to reflect changing market conditions.

64. V.T.C.A. Human Resources Code, § 93.003. 65. V.T.C.A. Human Resources Code, § 93.004.

(c) The committee shall make rules regarding designation of a central nonprofit agency to facilitate the distribution of orders among agencies for the blind, and other procedures necessary to achieve the purposes of this chapter.

(d) Requisitions for products and services required by state agencies are processed by the State Board of Control according to rules established by the board. (R.S. Art. 664—5, Sec. 3; Sec. 3, H.B. No. 2071, 66th Legis., Reg.Sess., 1979.)

Sec. 20. Section 93.010, Human Resources Code, is amended<sup>66</sup> to read as follows:

**Sec. 93.010. Rules**

After consulting with the committee and reviewing the committee's recommendations, the State Commission for the Blind may make rules necessary to implement and administer this chapter. (R.S. Art. 664—5, Sec. 10; Sec. 8, H.B. No. 2071, 66th Legis., Reg.Sess., 1979.)

Sec. 21. Chapter 93, Human Resources Code, is amended by adding<sup>67</sup> Sections 93.011, 93.012, 93.013, 93.014, and 93.015 to read as follows:

**Sec. 93.011. Product Specifications**

Except as otherwise provided by this section, a product manufactured for sale through the State Board of Control to any office, department, institution, or agency of the state under this chapter shall be manufactured or produced according to specifications developed by the State Board of Control. If the State Board of Control has not adopted specifications for a particular product, the production shall be based on commercial or federal specifications in current use by industry for the manufacture of the product for sale to the state. (Sec. 4, H.B. No. 2071, 66th Legis., Reg. Sess., 1979.)

**Sec. 93.012. Determinations of Fair Market Value**

(a) In determining the fair market value of products or services offered for sale under this chapter, the committee shall give due consideration to the following type of factors:

(1) to the extent applicable, the amounts being paid for similar articles in similar quantities by federal agencies purchasing the products or services under the authorized federal program of like effect to the state program authorized by this chapter;

(2) the amounts which private business would pay for similar products or services in similar quantities if purchasing from a reputable corporation engaged in the business of selling similar products or services;

(3) to the extent applicable, the amount paid by the state in any recent purchases of similar products or services in similar quantities, making due allowance for general inflationary or deflationary trends;

(4) the actual cost of manufacturing the product or service at a sheltered workshop offering employment services to blind or other severely handicapped individuals, with adequate weight to be given to legal and moral imperatives to pay blind or other severely handicapped workers equitable wages; and

(5) the usual, customary, and reasonable costs of manufacturing, marketing, and distribution.

(b) The fair market value of a product or service, determined after consideration of relevant factors of the foregoing type, may not be exces-

66. V.T.C.A. Human Resources Code, § 93.010. 67. V.T.C.A. Human Resources Code, §§ 93.011 to 93.015.

sive or unreasonable. (Sec. 4, H.B. No. 2071, 66th Legis., Reg.Sess., 1979.)

**Sec. 93.013. Exceptions**

(a) Exceptions from the operation of the mandatory provisions of Section 93.011 of this code may be made in any case where:

(1) under the rules of the State Board of Control, the product or service so produced or provided does not meet the reasonable requirements of the office, department, institution, or agency; or

(2) the requisitions made cannot be reasonably complied with through provision of blind-made products or services.

(b) Each month, the State Board of Control shall provide the committee with a list of all items purchased under the exception provided by Subsection (a) of this section. The committee shall adopt the form in which the list is to be provided and may require the list to include the date of requisition, the type of product or service requested, the reason for purchase under the exception, and any other information that the committee considers relevant to a determination of why the product or service was not purchased in accordance with Section 93.011 of this code.

(c) No office, department, institution, or agency may evade the intent of this section by slight variations from standards adopted by the State Board of Control, when the products or services produced or provided by the blind, in accordance with established standards, are reasonably adapted to the actual needs of the office, department, institution, or agency. (Sec. 6, H.B. No. 2071, 66th Legis., Reg.Sess., 1979.)

**Sec. 93.014. Procurement for Political Subdivisions**

A product manufactured for sale to a political subdivision of this state or an office or department thereof shall be manufactured or produced according to specifications developed by the purchaser. The provisions of Section 93.013 of this code shall also apply to procurements of political subdivisions, however those political subdivisions shall make the determinations regarding reasonable requirements and compliance which are required of the State Board of Control in that section. All uses of the exceptions provision shall be reported to the committee in the same manner as that provided in Section 93.013 of this code and no office or department of a political subdivision may evade the intent of this section by slight variations from specifications adopted in accordance with this section, when the products or services produced or provided in accordance with this chapter are reasonably adapted to the actual needs of that office or department. (Sec. 7, H.B. No. 2071, 66th Legis., Reg.Sess., 1979.)

**Sec. 93.015. Political Subdivisions Excluded**

There are excluded from the application of this chapter the political subdivisions of the state that are not required by Title V of the Federal Rehabilitation Act of 1973, as amended (29 U.S. Code Sections 790 through 794), to take affirmative action with respect to employment and other matters relating to handicapped individuals. Nothing in this chapter shall be construed as limiting blind or other severely handicapped individuals in their capacity to sell their products to any willing buyer. (Sec. 9, H.B. No. 2071, 66th Legis., Reg.Sess., 1979.)

Sec. 22.<sup>68</sup> Each section of this article takes effect only if and when the legislation on which it is based takes effect, but not earlier than September 1, 1979.

<sup>68</sup> Prec. V.T.C.A. Human Resources Code,  
§ 1.001 note.

Sec. 23.<sup>68</sup> All provisions of the Code Construction Act (Article 5429b—2, Vernon's Texas Civil Statutes) apply to this article.

Sec. 24.<sup>68</sup> As each section of this article takes effect, the Act or part of an Act on which it is based is repealed.

Sec. 25. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 12, 1979, by a non-record vote; House concurred in Senate amendments to H.B. No. 1834 on May 27, 1979, by a non-record vote; passed by the Senate, as amended, on May 26, 1979, by a viva-voce vote.

Approved June 13, 1979.

Effective Sept. 1, 1979.

68. Proc. V.T.C.A. Human Resources Code,  
§ 1.001 note.